

EXHIBIT 1

EXHIBIT 7

To the Declaration of Rakesh N.
Kilaru

REDACTED VERSION OF
DOCUMENT REQUESTED
TO BE FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL) Case No.
LITIGATION) 4:20-cv-03919 CW
_____)

DEPOSITION OF DANIEL RASCHER
Tuesday, January 10, 2023

JOB NO. 220885

REPORTED BY:

HEIDI BELTON, CSR, RMR, CRR, CCRR, CRC

CSR No. 12885

January 10, 2023

9:26 a.m.

Videotaped deposition of Daniel Rascher,
held at the offices of Winston & Strawn,
LLP, 101 California Street, San
Francisco, California 94111, before Heidi
Belton, a Certified Shorthand Reporter,
Registered Merit Reporter, Certified
Realtime Reporter, California Certified
Realtime Reporter, Certified Realtime
Captioner.

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1 TUESDAY, JANUARY 10, 2023

9:25 A.M.

2 P R O C E E D I N G S

3 THE VIDEOGRAPHER: All right. Good
4 morning, ladies and gentlemen. We're on video
5 record in the deposition of Dr. Daniel Rascher.
6 It's in the matter of In re College Athlete NIL
7 Litigation. It's being held in the United States
8 District Court, District of California, Oakland
9 Division. Case number 4:20-CV-03919-CW.

10 This deposition is being held at 101
11 California Street, in San Francisco, California on
12 January 10, 2023 at approximately 9:26 a.m. My name
13 is Frank Quirarte; I'm your legal video specialist.
14 I'm here from TSG Reporting, Inc. We're
15 headquartered at 228 East 45th Street, Suite 810,
16 New York, New York 10017. Our court reporter today
17 is Heidi Belton, also in association with TSG
18 Reporting.

19 Madam Court Reporter, will you please
20 swear in the witness.

21 (Whereupon, the witness, DANIEL RASCHER,
22 having been duly sworn, testified as follows:)

23 EXAMINATION

24 BY MR. KILARU:

25 Q. Good morning, Dr. Rascher.

1 A. Good morning.

2 Q. I happen to know it's not your first time
3 being deposed so I'll skip many of the procedural
4 questions and just ask before we start: Are you
5 able to give truthful testimony today?

6 A. Yes.

7 Q. Can you think of any reason why that
8 wouldn't be the case?

9 A. No.

10 Q. Okay. You're here as an expert witness in
11 the lawsuit titled College Athlete NIL Litigation;
12 right?

13 A. Yes.

14 Q. Okay. And you recently provided testimony
15 in a case called Shields versus FINA; is that right?

16 A. Yes. I think that was the name of the
17 case.

18 Q. About swimming and swimming compensation?
19 I'm probably getting that wrong.

20 A. Yes.

21 Q. And obviously you are an expert in the
22 previous cases and in this litigation also; is that
23 right?

24 A. Yes.

25 Q. Are there any other sports antitrust cases

1 that you've submitted reports in in the last two
2 years, that you're aware of?

3 A. Well, the NFL Sunday Ticket case that --

4 Q. I should have known that one. Yes.

5 A. I don't believe so. I would have to look
6 at my CV, I guess. But I think that's it.

7 Q. Okay.

8 A. Sports antitrust. I think so.

9 Q. When were you first retained as an expert
10 by the plaintiffs in this case?

11 A. I don't -- I don't know. I don't
12 remember.

13 Q. Was it within the last year? Two years?

14 A. I think it was before within the -- I
15 think it was beyond the last -- what are we in?
16 January.

17 Yeah, I feel like it -- I'm sort of -- I
18 know you don't want me to speculate, but I believe
19 it's more than a year ago. I'm pretty sure. But I
20 don't -- I really don't remember when.

21 Q. Do you recall how you came to be retained?

22 A. I don't.

23 Q. Did you call the plaintiffs? Did the
24 plaintiffs call you?

25 A. I don't think I called the plaintiffs; I

1 think they called me.

2 Q. And when did you start working on the
3 expert report that you've submitted in this case?

4 A. I -- I would say sort of the spring of
5 last year.

6 Q. The spring of 2022?

7 A. Yeah.

8 Q. Okay. Do you have a sense of how many
9 hours you've spent working on the report?

10 A. I don't.

11 Q. Have you spoken -- do you know who
12 Mr. Desser is?

13 A. Yes.

14 Q. Have you spoken with him in connection
15 with this case?

16 A. Yes.

17 Q. How often have you spoken with him?

18 A. Once or twice. I think once or twice.

19 Q. Did you rely on those conversations with
20 him in any way in forming your conclusions in this
21 case?

22 A. No, I don't believe so.

23 MR. KILARU: I'd like to turn your
24 attention to your report in this case, which we will
25 have as Exhibit 1.

1 Can you give him a copy of that?

2 (Exhibit 1 marked.)

3 BY MR. KILARU:

4 Q. Dr. Rascher, what we've just handed you as
5 Exhibit 1 appears to be your expert report in this
6 case; right?

7 A. (Witness reviews document.)

8 Yes.

9 Q. And I'll represent to you that it's a full
10 copy; every page is in there.

11 You're aware that your report needs to
12 contain a complete statement of all the opinions
13 that you intend to express at this stage of the
14 litigation; is that right?

15 MR. SIEGEL: Objection to the extent that
16 calls for a legal conclusion.

17 But you can answer.

18 THE WITNESS: Yeah, I --

19 BY MR. KILARU:

20 Q. Is that your understanding?

21 A. -- I -- I don't know that.

22 Q. Okay. Well, sitting here today, do you
23 have any opinions related to this case that you
24 formed that are not contained in that report?

25 A. Not that I can think of.

1 Q. Okay. Do you have any economic models
2 that you intend to offer that are not contained in
3 the report that's sitting in front of you?

4 A. I mean, to the extent that the report
5 discusses sort of the ongoing nature of this lit- --
6 of this case, I think I talk in the report a little
7 bit about, you know, doing this and doing that and
8 sort of describing those processes.

9 So if -- you know, if this case goes
10 forward, if I'm to continue in the case, then I -- I
11 plan to do some of the things that I talk about in
12 the report.

13 Q. So let me give you an example.

14 Could you turn to paragraph 155 of your
15 report on page 76.

16 A. I see that.

17 Q. So the first sentence of that paragraph
18 talks about how you have modeled competition for
19 broadcast NII group licenses at the Power Five
20 conference level as opposed to at the individual
21 school level. Is that fair?

22 A. I just have to read it.

23 Q. Sure.

24 A. (Witness reviews document.)

25 Okay. Yes.

1 Q. Is that correct?

2 A. That I've modeled -- done a modeling
3 competition between conferences as opposed to
4 between the schools directly?

5 Q. Yes.

6 A. Yes.

7 Q. You haven't done any modeling of
8 school-level compensation decisions; right?

9 A. In terms of the broadcast and NIL?

10 Q. Yes.

11 A. No, I don't believe so.

12 Q. Okay. Why haven't you done that to date?

13 A. I mean, I haven't -- my analysis was
14 looking at for -- for broadcast, it's looking at the
15 broadcast contracts that the -- that the -- that the
16 conferences have. And so I'm looking at -- at how
17 those contracts could lead to NIL payments to the
18 athletes.

19 Q. So just to be clear, it's your opinion
20 that in the but-for world regarding broadcast NIL,
21 the conferences would be competing with each other
22 for student athlete labor services; correct?

23 A. I believe that the conferences, the
24 members of the conference are the schools. And they
25 set rules at the conference level.

1 A similar rule that they set as an example
2 is that they're going to share those revenues from
3 the broadcast contracts. They generally share them
4 equally; right?

5 And so I'm modeling them setting another
6 set of rules about how they would share the name,
7 image and likeness payments to the athletes.

8 Q. Right. So your model assumes that the
9 competition for providing these payments to student
10 athletes is occurring at the conference level, not
11 the school level; correct?

12 MR. SIEGEL: Objection; vague and
13 ambiguous as to "assume."

14 THE WITNESS: So the schools are competing
15 for the athletes. But within the rules that are set
16 by the conferences -- and obviously other rules that
17 are set by the NCAA and others.

18 So the schools are competing in the labor
19 market for the athletes. But under a set of rules
20 that are -- that are determined at the conference
21 level. And so the conferences compete with each
22 other also. The schools within the conferences as
23 members are competing for athletes, they're
24 competing for sponsors, they're competing for media
25 deals and so forth.

1 BY MR. KILARU:

2 Q. But to the extent the schools are
3 competing with each other, in your model, they're
4 doing so based on rules that are set by their
5 conference regarding compensation; correct?

6 A. Can you say that again?

7 Q. Yes. To the extent the schools are
8 competing with each other in your model with
9 broadcast NIL payments, they're doing so based on
10 rules that are set by their conference?

11 A. Yes. There's a -- a determination that --
12 that when -- that the schools will make joint
13 venture decisions within that conference, when
14 they're allowed to do that, often.

15 So they -- it's exactly how they already
16 deal with the broadcast. They already have this
17 exact setup in place when they -- when they get the
18 broadcast deals and they distribute those revenues
19 to the schools generally equally.

20 So they're already doing that. That's a
21 rule that they've all agreed to. And they compete
22 with each other, right, for fans and everything and
23 yet they're still under this rule that shares those
24 revenues.

25 Q. Right. So I want to make sure we agree on

1 this point, which I think is a simple one. In your
2 model, to the extent the schools are competing -- a
3 school in the Big 10 is competing with a school in
4 the ACC for a student athlete, the Big 10 school can
5 only make payments up to the Big 10 limit that's set
6 in your Big 10 amount that's set forth in your
7 report; and the school in the ACC can only make
8 broadcast NIL payments up to the amount that's
9 listed in your report?

10 MR. SIEGEL: Objection; asked and answered
11 and compound.

12 THE WITNESS: So there's -- can only make.
13 So in the future -- right? -- I'm -- I'm looking at
14 with respect to damages in the past and coming up
15 with a reasonable estimate of damages in the past.
16 Right?

17 BY MR. KILARU:

18 Q. Let me ask a better question.

19 Looking backwards for your damages model,
20 the school in the Big 10 would offer the amount
21 that's listed in your report that's set for the
22 Big 10; correct?

23 A. Through -- it -- based on my analysis
24 through competition, a school in the Big 10 would
25 offer an amount -- yeah, that's -- I list an

1 example. I mean, this is a class cert report, so
2 this is an example of how it would go. And then a
3 school in a different conference would com- -- would
4 be competing and offer an amount up -- up to that
5 amount that's agreed upon in its conference.

6 Q. Okay. Stepping back for a minute.

7 You're attempting, broadly speaking, to
8 model but-for worlds in which there are no NCAA
9 regulations restricting athletes from
10 commercializing their name, image and likeness; is
11 that correct?

12 A. For damages?

13 Q. Yes, for damages.

14 A. So I'm modeling obviously some of those.

15 Q. Right.

16 A. So it's -- right. It's a but-for world in
17 which the -- the ability of the athletes to monetize
18 their NIL is not restricted by the NCAA and -- and
19 I'm looking at damages obviously for some of those
20 areas that they might be able to do that in.

21 Q. As you say in your report, you are
22 assuming in the damages but-for world that all other
23 NCAA rules remain as they are today; correct?

24 MR. SIEGEL: I would just object. I think
25 probably the best statements to that are in the

1 report itself. To the extent that mischaracterizes
2 the report, I think maybe you should refer to the
3 report.

4 MR. KILARU: What's the objection? What's
5 the grounds for the objection?

6 MR. SIEGEL: That it mischaracterizes the
7 report because the report doesn't exactly say that.

8 MR. KILARU: Okay.

9 Q. Do you model any other changes -- any
10 changes to NCAA rules that do not relate to NIL?

11 A. So I think -- so as you under- -- as you
12 know, the NCAA has its manual -- right? -- and it
13 has a set of rules in the manual. And then it has
14 its interim rules and its updates related to NIL.
15 Right?

16 So sort of -- that broad set of rules
17 coming from different places, I'm modeling as if
18 they change the NIL-related rules but not, for
19 instance, the rules on pay for performance as an
20 example, if that's --

21 Q. Yeah. So -- and you would agree with me
22 you haven't done any analysis of whether changes to
23 the NIL rules, as you just mentioned them, would
24 prompt any other rules changes in the NCAA manual?

25 MR. SIEGEL: I object to that. That's

1 beyond the scope of his opinion.

2 THE WITNESS: So for the damages analysis,
3 I'm trying to come up with reasonable -- with
4 reasonable, reliable estimates of damages based on
5 essentially not -- you know, making a but-for world
6 that's -- that's least different from the actual
7 world or else there's many other variables involved.

8 So I'm trying to minimize the changes,
9 just the ones that are focused in the scope of -- of
10 what I've been asked to focus on.

11 And in terms of the injunction, it's
12 essentially the same thing --

13 BY MR. KILARU:

14 Q. So just to be --

15 A. -- in terms of -- in terms of me trying to
16 model or think about what -- what rules will be
17 going away versus which rules are staying.

18 Q. So just to use your example, you haven't
19 modeled, for example, if changes to the NIL rules
20 would have effects on the rules regarding, as you
21 said, pay for -- pay for performance; right?

22 MR. SIEGEL: Object, again, as beyond the
23 scope of the opinion.

24 But you can answer, Dr. Rascher.

25 THE WITNESS: I modeled sort of what we

1 see today, which is payments for NIL from third
2 parties. And then an additional set of payments
3 from third parties for video games, as you know, and
4 then an additional set of payments through the
5 conferences from the broadcasters for the use of
6 their NIL.

7 And purposefully I'm assuming that the
8 other NCAA rules are in place and that they would
9 continue to enforce those rules.

10 BY MR. KILARU:

11 Q. All right. So your assumption is that the
12 other rules, besides the ones you've assessed in
13 this case, remain unchanged; correct?

14 A. So it's not just an assumption, though.
15 If you look at the -- the nature of competition for
16 athletes, and we've seen this over the last, you
17 know -- what year -- the last 15 years in these
18 various lawsuits -- actually, the last 20 --
19 20 years in these lawsuits -- each time there's a
20 change, right? There's competition up to those
21 amounts.

22 And so I'm -- I'm looking at that when I'm
23 doing the NIL analysis. I'm looking at the nature
24 of competition for the athletes. And NIL is just
25 one of the currencies that in the -- in the athlete

1 labor market that the athletes are allowed to be
2 paid -- or would be allowed to be paid in the
3 but-for world.

4 Q. So I want to make sure I fully understand
5 that.

6 Are you offering the opinion that no other
7 rules would change in the but-for world besides
8 the -- the NIL rules? Or are you assuming for
9 purposes of your analysis that no other rules change
10 besides the NIL rules?

11 A. Neither of those. I'm -- I'm assuming for
12 my -- for purposes of damages analysis that no other
13 rules would change. But I'm also assessing that
14 assumption based on basically what we've seen in the
15 past.

16 Q. Okay. And do you believe that assumption
17 is valid or not, based on what you've seen in the
18 past?

19 A. From what I've seen, yes, I -- I think
20 that assumption is valid.

21 Q. Okay.

22 A. And that's also within the scope of sort
23 of what I'm -- what -- this case is about a
24 particular rule and so we're -- or a particular set
25 of rules so I'm looking at what happens when those

1 set of rules change.

2 Q. Could you turn to page 5, paragraph 9 of
3 your -- or paragraph 9 of your report. The
4 paragraph actually starts on page 4, but I was going
5 to focus on page 5.

6 A. Okay.

7 Q. And what I wanted to do is just briefly
8 review the three damages classes just to make sure
9 we're on the same page when we discuss them today.

10 So the first class that you've modeled
11 damages for is listed here in 9B and that's the
12 football and men's basketball class; is that right?

13 A. Yes.

14 Q. Okay. And that class encompasses all full
15 grant and aid scholarship recipients on a Division I
16 men's basketball team or an FBS football team at a
17 college or university that's a member of one of the
18 Power Five conferences plus Notre Dame starting on
19 June 15 of 2016; is that right?

20 MR. SIEGEL: Just object. That's not the
21 complete definition, but --

22 MR. KILARU: He's free to correct it if
23 he'd like.

24 THE WITNESS: I mean, the definition's
25 there. It's that -- it's those two sentences.

1 BY MR. KILARU:

2 Q. Okay. So the class --

3 A. The three sentences.

4 Q. The class is limited to athletes in the
5 Power Five; is that correct?

6 A. Yes.

7 Q. And when we say "Power Five," we're
8 referring to the Atlantic Coast conference, the
9 Big 10, the Big 12, the PAC-12 and the Southeastern
10 Conference; right?

11 A. Yes.

12 Q. Okay. And you're limiting -- this class
13 is limited to recipients of full grant and aid
14 scholarships; correct?

15 A. Yes.

16 Q. So, for example, a walk-on player who does
17 not have a scholarship is not included in the class?

18 A. Correct.

19 Q. Okay. And on behalf of this class, you
20 modeled damages for what you call video game name,
21 image and likeness, right -- damages; correct?

22 A. Yes.

23 Q. And that's based on -- and we'll talk
24 about this in more detail -- but a share of -- of
25 some license payment for participation in video

1 games regarding college -- college football and
2 college basketball; right?

3 A. A share of a license payment for the use
4 of their NIL in -- in video games, yes.

5 Q. You model for people who post July 1 of
6 2021 have a name,, image, and likeness deal damages
7 for them in the past; correct?

8 A. Yes.

9 Q. If someone -- if a Power Five athlete --
10 Power Five men's basketball athlete -- just to use
11 one example -- has no third-party name, image, and
12 likeness deals today, you would not assess any
13 damages for them in terms of third-party NIL;
14 correct?

15 MR. SIEGEL: Objection; misstates the
16 report. Are we talking about for class
17 certification? The merits?

18 THE WITNESS: The -- so I have a set of
19 data and so that's who I'm -- who I'm showing how to
20 measure damages in a class certification, presumably
21 that -- that would happen in merits.

22 And so to the extent there's an athlete
23 who has received an NIL payment today, but I haven't
24 yet received information on them, then I wouldn't be
25 measuring their analysis in my example here; right?

1 But the -- the members of this class could
2 also receive damages payments if they have been paid
3 since July 1 of 2021 for the use of their NIL.

4 BY MR. KILARU:

5 Q. So sitting here today, if there's a
6 student athlete who has not reported to their
7 institution any name, image, or likeness payment
8 from a third party, that athlete would have no
9 damages in your current model; correct? For
10 third-party NIL.

11 A. Well, you're saying "reported" to their
12 school. I mean, that's currently the method that
13 I've used to -- just to begin the analysis of this
14 for class certification purposes.

15 I don't know if there would be another
16 method of them reporting this information to some
17 other source that then I could use that information
18 and start to apply a model to it.

19 Q. But sitting here today, you've only looked
20 at the reports to institutions of third-party
21 transactions; correct?

22 A. I believe that is -- I'm trying to think
23 if something came from a conference. But I believe
24 all of them came from institutions, as you're
25 saying.

1 Q. Okay. The last category of damages for
2 people in the football and men's -- for members of
3 the football and men's basketball class, are damages
4 for broadcast NIL; is that correct?

5 A. Yes.

6 Q. And how would you characterize the
7 payments that would be made for broadcast NIL to
8 this group of -- to this group of class members?

9 A. I don't -- what do you mean by
10 "characterize"?

11 Q. What are the payments?

12 A. So the payments are for the use of their
13 NIL in broadcast events, basically coming --
14 stemming from competition across the conferences.

15 Q. Okay.

16 A. Yeah.

17 Q. The next class listed here is the women's
18 basketball class; correct?

19 A. Yes.

20 Q. And that class is, again, limited to
21 individuals in the Power Five conferences, including
22 Notre Dame; right?

23 A. Yes.

24 Q. Okay. And for this group, you have
25 assessed -- you have modeled damages for broadcast

1 NIL, as we just discussed; right?

2 A. Yes.

3 Q. Using the same methods as for the football
4 and men's basketball class?

5 A. Yes.

6 Q. And you've also modeled third-party NIL,
7 again, using the same constructs we just discussed;
8 correct?

9 A. Yes.

10 Q. Okay. And then the last class is what's
11 called the additional sports class; right?

12 A. Yes.

13 Q. Okay. So I want to make sure I fully
14 understand who is part of this class.

15 This would in- -- this class includes
16 football, men's basketball, and women's basketball.

17 This class could include -- let me start
18 the question again -- men -- men's basketball,
19 women's basketball, and football student athletes
20 who do not have a full scholarship; right?

21 A. Football, men's basketball, women's
22 basketball, athletes in Division I. Yes. It's
23 regardless of their -- of their scholarship level.
24 It's -- it's defined if -- you know, if they have
25 shown that they have value in the NIL market.

1 Q. And then it also includes any other
2 Division I athletes who have, as you said, shown
3 that they have NIL value in the third-party market;
4 correct?

5 A. Yes.

6 Q. Okay. You do not model any video game
7 damages for men's basketball or football athletes
8 who have not monetized their NIL in the third-party
9 market since July 1, 2021; correct?

10 A. Correct. They -- the analysis
11 incorporates them in terms of the way that the
12 analysis is done. But then since they're not part
13 of -- if they're not part of these three classes
14 because -- you were sort of general in that -- but
15 if they don't fit within class -- the football men's
16 basketball class, women's basketball class or
17 additional sports class, then I'm not sort of
18 assigning a -- a damage to them.

19 They are harmed in a -- you know, in a
20 similar fashion, but they're not in these three
21 classes.

22 Q. Can you think of any economic reason why
23 they are not part of these three classes?

24 A. I mean, I -- I didn't define the classes.
25 When you say -- so an economic reason.

1 But that -- but, I mean, defining a class -- I don't
2 understand how you apply economics to defining a
3 class. I mean, like what do you mean by that
4 question?

5 Q. I'm just asking you if you can think of
6 any reason based on economics why they're not part
7 of the class definitions in this case?

8 A. No.

9 MR. SIEGEL: Just object to vague and --
10 vague and ambiguous as to "economic reason."

11 THE WITNESS: No. I mean, the classes are
12 defined as they're defined. I -- you know, I
13 didn't -- I didn't define them.

14 BY MR. KILARU:

15 Q. Do you know who the three named plaintiffs
16 are in this case?

17 A. Yes.

18 Q. Okay. And this is not a memory test. One
19 is them is Grant House, one of them is Sedona
20 Prince, one of them is Tymer Oliver; right?

21 A. Yeah -- yes.

22 Q. Have you spoken to any of them about the
23 damages models that you've prepared in this case?

24 A. No.

25 Q. Okay. You would agree with me there's no

1 named plaintiff who plays men's basketball; right?

2 A. Correct.

3 Q. Okay. I'd actually like to talk about the
4 three damages models in a little bit more detail.
5 Just some kind of basic principles upfront.

6 You'd agree that your but-for worlds, as
7 we call them, first assume that the market
8 participants are engaging in rational economic
9 behavior; right?

10 A. The -- the various participants? Yes.

11 Q. Okay. You would agree that you -- your
12 but-for worlds account -- need to account for the
13 law of supply and demand?

14 A. I mean, generally when it applies. I
15 mean, I haven't -- I'm not thinking about it in that
16 way, so I'd have to go and think about each topic
17 and I'm not -- not going to do that right here.

18 Q. And you -- on broadcast NIL, in
19 particular, you model damages for years going back
20 to 2016 for each of the class members; correct?

21 A. Yes.

22 Q. For example, you say that there's an
23 amount that a Big 10 men's basketball player would
24 have made in 2016, just to give one example.

25 A. Right. I believe that's -- I have that in

1 my -- in one of my appendices.

2 Q. And is it your opinion that the prices you
3 list -- or excuse me -- the damages you list in
4 those appendices represent an equilibrium price for
5 what that student athlete would receive?

6 A. I think as an estimate of a reasonable and
7 reliable damage, I think that it's a conservative
8 estimate of an equilibrium price.

9 Q. Let's talk about the broadcast NIL group
10 for damages, in the but-for world in particular, and
11 it may not surprise you to learn we'll spend a lot
12 of time talking about that today.

13 Can I turn your attention to paragraph 153
14 of your report. I think it's on page 75.

15 A. Yeah, can I read it first, or do you want
16 to just ask me?

17 Q. No, please go ahead.

18 A. Okay.

19 Q. And I think I gave you the wrong
20 paragraph. I apologize. It's actually 154.

21 A. Oh.

22 (Witness reviews document.)

23 Okay.

24 Q. Okay. In terms of the broadcast NIL
25 damages, you would agree you're modeling payments in

1 a labor market; correct?

2 A. Yes.

3 Q. You'd agree that, as you conclude in this
4 paragraph, I believe -- let me make sure I have the
5 paragraph -- the payments for broadcast NIL are
6 being made in a labor market; correct?

7 A. Yes.

8 Q. And I think it's in paragraph 153 -- which
9 is where I directed you initially, you say that "In
10 the but-for world, Power Five conferences or their
11 schools would have competed to attract athletes by
12 offering broadcast NIL payments"; correct?

13 A. Yes.

14 Q. Okay. And so the schools in this market
15 are competing with each other for the labor of
16 student athletes, as you've modeled the market;
17 right?

18 A. Yes.

19 Q. Okay. Now, you'd agree that the basic
20 unit of labor traded in a labor market is what you
21 would call a "unit of talent"; correct?

22 A. Okay. So can you say that again?

23 Q. Sure. In previous work, you've concluded
24 that the unit of currency traded in a labor market
25 is what you call a "unit of talent"; correct?

1 A. Well, that's from the -- that's from the
2 athlete side. So the trade involves two sides;
3 right?

4 Q. Okay.

5 A. Something going one direction and
6 something going the other direction.

7 So the athlete's providing their athletic
8 services and then the other side of the market's
9 providing whatever different types of currency
10 that -- that it might be providing --

11 Q. Um --

12 A. -- in opportunities and things like that.

13 Q. In this market -- in the market -- in your
14 analysis of broadcast NIL, are you assuming that the
15 students are also providing their -- their NILs for
16 the institutions for use?

17 A. Yes. They already do that. And that they
18 would continue to do that. They would just be paid
19 through competition.

20 Q. So is it your opinion that -- would you
21 agree that some athletes have more marketable NILs
22 than others?

23 A. It depends on the situation. But -- but,
24 yeah, we see athletes out in the marketplace selling
25 their NIL in certain -- you know, it depends on the

1 product and -- and the -- the use of those -- of
2 those NILs.

3 Q. Okay. So just to use last night's
4 national championship game as an example, the
5 quarterback for the Georgia team, his name is
6 Stetson Bennett; correct? The starting quarterback?

7 A. Yeah, I think it's Stetson Bennett IV,
8 maybe.

9 Q. Probably right.

10 He, in the broadcast, is on the screen
11 pretty frequently; it's fair to say?

12 A. Yes.

13 Q. He may or may not get interviewed in a
14 particular game depending on his performance?

15 A. Yes.

16 Q. And is it your opinion that his NIL is
17 more valuable to the broadcaster than a
18 fourth-string offensive lineman who sits on the
19 bench?

20 A. Well, the -- the broadcaster needs -- they
21 don't know what's going to happen. So the
22 broadcaster needs everyone's NIL. And certainly at
23 the time that the school's recruiting an athlete --
24 right? -- it's -- it's not known exactly which
25 athletes are going to play more.

1 So we see this in the contracts between
2 the broadcasters and the conferences. They -- they
3 want to make sure that everyone -- that all the NILs
4 are -- are there and that the broadcaster's
5 indemnified.

6 And so essentially that uncertainty
7 especially coming out of high school sort of leads
8 to a situation where the -- in the way that I've
9 modeled it. I'm not disagreeing with you that
10 someone might appear more on a television -- in a
11 game than someone else obviously.

12 Q. So just so I understand it. From your
13 point of view -- from your -- it's your conclusion
14 that from the broadcaster's point of view, the value
15 of Stetson Bennett's NIL is the same as the value of
16 a fourth-string offensive lineman's NIL.

17 MR. SIEGEL: Objection; misstates
18 testimony.

19 THE WITNESS: I'm -- yeah, exactly. It
20 misstates my testimony.

21 I'm modeling a competitive equilibrium
22 that's reasonable and reliable as a way of measuring
23 damages in the past; right? And so you can have a
24 competitive outcome, which two different people are
25 essentially being paid the same amount, even if they

1 have -- even if one of them appears more on the show
2 because who -- who would have known that that was
3 going to happen, for instance.

4 BY MR. KILARU:

5 Q. So it's your testimony that going into a
6 broadcast, the broadcaster wouldn't know if
7 Stetson Bennett was more likely to get air time than
8 the fourth string offensive lineman?

9 A. No, but that's not when these sort of
10 licenses are -- are put in place. If you look at
11 the dozens of -- really hundreds of licenses we see
12 that are -- you know, that have some analogous
13 situations to this -- right? You see those signed
14 up ahead of time and then products are created,
15 whether they're digital video products or not.

16 We see those athletes, I mean, again,
17 hundreds of these. Those athletes getting paid the
18 same amount sort of regardless of -- of how those
19 athletes are being used in those different products.
20 And so this is a similar example to those.

21 Q. So is it your opinion that the broadcaster
22 values the NIL of Stetson Bennett the same as the
23 fourth-string offensive lineman on the Georgia team?

24 A. I don't have -- no, I don't have that
25 opinion, no.

1 Q. Okay. Do you believe the broadcaster
2 values Stetson Bennett's NIL more than the
3 fourth-string offensive lineman on the Georgia team?

4 MR. SIEGEL: Objection; vague and
5 ambiguous as to time.

6 THE WITNESS: My opinion is around what
7 happens in the labor market. What is the outcome of
8 the labor market. Not -- what does that particular
9 broadcaster for that particular event think is going
10 to happen and -- and hope that they have the rights
11 to the people that they think are going to appear.
12 They take care of all that ahead of time.

13 BY MR. KILARU:

14 Q. Okay. But --

15 A. Often years ahead of time.

16 Q. We'll talk about the labor market in a
17 minute.

18 But at the start of the season, is it your
19 view that the broadcasters had believed that
20 Stetson Bennett had the same NIL value as a
21 fourth-string offensive lineman on Georgia's team?
22 I'm just asking about the broadcasters for now;
23 we'll get to the labor market.

24 A. I mean, I don't have an opinion on what
25 the broadcasters believe. You'll have to ask hem.

1 Q. Turning to the school's position. Is it
2 your position that Georgia values the NIL --
3 University of Georgia -- values the NIL of
4 Stetson Bennett the same as the value of a
5 fourth-string offensive lineman?

6 A. I mean, again, I don't have -- I don't
7 have that opinion, no.

8 Q. Okay. Your model would say that in this
9 last year, Stetson Bennett would receive the exact
10 same payment as the fourth string offensive lineman,
11 assuming the fourth-string offensive lineman was on
12 scholarship; correct?

13 A. Was on a full scholarship. Yeah,
14 assuming -- I'm just trying to make sure that
15 they're on the team -- both of them are on the team.
16 They both have full scholarships, sort of regardless
17 of -- of what string they are, that I've modeled
18 it -- the competitive equilibrium, which is that
19 they would receive the same payment.

20 Q. Okay. And --

21 A. As we see in group licenses, as I had
22 mentioned hundreds of -- of group licenses.

23 Q. And at the time of recruiting -- I'm just
24 going to use a hypothetical example -- in 2018,
25 Georgia would make the same offer to a five-star

1 quarterback as a three-star offensive lineman who
2 was projected to be a backup.

3 MR. SIEGEL: Objection; vague and
4 ambiguous as to "offer."

5 THE WITNESS: So the conference would have
6 a set of rules -- and again, in the past, I'm
7 modeling what reasonable -- reasonable and reliable
8 measure of damages; right? But it's based on the
9 idea that the conference would have a set of rules
10 in terms of -- of how much that payment would be.

11 And that's based on the internal dynamics
12 of how a conference operates. They want to mute
13 that competition somewhat amongst themselves; right?
14 At the same time, they want to compete with other
15 conferences; right?

16 They have to -- they have to -- you know,
17 the way voting works, the -- the sort of bottom
18 members of the conference -- right? -- aren't going
19 to vote to allow Georgia to -- to sort of get all
20 the best athletes and make it hard for those schools
21 to be able to compete with other schools in other
22 conferences in order to get the three stars and the
23 two stars, for instance.

24 So it is my opinion that -- that, again,
25 we see this analogous in other situations partly

1 because of the -- the uncertainty of coming out of
2 high school, how the broadcasters need everyone's
3 NILs, and other reasons that I've listed in my
4 report, that they would come -- come to a situation
5 where they would have essentially equally shared
6 royalty payments.

7 And so Georgia would -- would be only able
8 to offer up to that amount. If they tried to offer
9 more than that amount; right? -- and they -- it's --
10 and they're offering sort of pay for performance,
11 then the NCAA's rules kick in.

12 (Reporter clarification.)

13 THE WITNESS: The NCAA's rules kick in.

14 BY MR. KILARU:

15 Q. Okay. There's a lot there that we will
16 discuss, I think, at various points today. But I
17 just want to start by going back to the question I
18 asked you, which is: Your model would assign the
19 same damages in 2018, for example, to a five-star
20 quarterback, as to a two-star offensive lineman
21 projected to be a backup at the same institution;
22 correct?

23 A. Right. I answered that, but yes.

24 Q. Yes. Okay. I just want to make sure.

25 Okay. You'd agree that currently the

1 conferences receive the NIL rights, to the extent
2 these NIL rights exist, currently the conferences
3 are already getting them; correct? For their
4 players -- for their players?

5 MR. SIEGEL: Objection; vague and
6 ambiguous.

7 THE WITNESS: So -- right. The
8 conferences -- the broadcasters are basically
9 saying, hey, you've got those rights. The
10 conferences are making sure that they get them from
11 the schools.

12 BY MR. KILARU:

13 Q. And they are not currently paying -- they
14 and the schools are not making any direct payments
15 to the student athletes for that NIL; correct?

16 A. The student athletes are all currently
17 getting paid the same amount, as I talk about in my
18 model, but it happens to be zero. And they get paid
19 the same amount for their scholarships, sort of back
20 to your point a little bit.

21 You know, the five-star and the two-star,
22 if they're both on full scholarship, are essentially
23 getting the same amount. And that's because there
24 are rules that -- that are in place that limit the
25 amount that the schools can pay them.

1 Q. In your model, you would agree with me
2 that the conferences are not paying -- Power Five
3 conferences are not making payments to all student
4 athletes that appear in a broadcast; correct?

5 A. What do you mean? I mean, that's -- any
6 payments at all?

7 Q. They're not making -- I'll ask a better
8 question.

9 You'd agree with me that you don't model
10 any broadcast NIL payments -- you don't model
11 broadcast NIL payments to every student athlete who
12 appears in a broadcast; correct?

13 A. Correct.

14 Q. Okay. So there are -- for example,
15 non-scholarship players who may appear in a
16 broadcast; correct?

17 A. Yes.

18 Q. So, for example, the kicker of a team may
19 not have a scholarship; right?

20 A. I mean, some -- that's possibly true, yes.

21 Q. Okay. A kicker who doesn't have a
22 scholarship may well appear in the broadcast;
23 correct?

24 A. Yes.

25 Q. It's pretty likely they'll appear in the

1 broadcast in an average football game; correct?

2 MR. SIEGEL: Well, objection; calls for
3 speculation.

4 THE WITNESS: I mean, I'm not agreeing
5 with you that kickers don't have scholarships.
6 But -- but to the extent that there's a kicker on a
7 team that doesn't have a scholarship and they happen
8 to be first-string or they happen to be called into
9 the game for some reason, then yeah, they might
10 appear in the broadcast.

11 BY MR. KILARU:

12 Q. And right now, for example, conferences --
13 some teams in conferences play non-conference
14 opponents during their schedule; correct?

15 A. Yes.

16 Q. So, for example -- I don't know why -- I
17 guess because it's timely, Georgia may play a team
18 that's not in the SEC; correct?

19 A. Yes.

20 Q. And whoever is paying Georgia for the
21 broadcast rights to that game, they don't have the
22 name, image, and likeness rights to the team that's
23 not in the broadcast, do they?

24 A. So I don't know -- I mean, that's -- my
25 model isn't really about the rights for name, image,

1 and likeness, it's the competition that pays the
2 athletes up to a point where the NCAA says this is
3 not a payment for NIL rights, whether they exist or
4 not. You know, you see this in -- in basketball --
5 pro basketball, and pro football; right?

6 So presumably those athletes are
7 getting -- if -- if their conferences are doing the
8 same thing, are getting paid for those -- for the
9 use of their NIL by -- by their own conference.

10 Q. But today, based on your analysis to date,
11 you don't know if, for example, Georgia plays a team
12 that's not in the Southeastern Conference, the
13 broadcaster of the game has secured whatever rights
14 may exist in the players who are not on the Georgia
15 team.

16 You don't know that, do you?

17 MR. SIEGEL: Objection; beyond the scope
18 of the opinion and calls for speculation.

19 THE WITNESS: I don't know what mechanism
20 they've determined allows them to show the game with
21 those other athletes right? But, again, my model is
22 based on a model of economic competition, not a
23 model of NIL -- right of publicity and all that.
24 It -- it doesn't require any of that.

25 BY MR. KILARU:

1 Q. You'd agree with me that the broadcast
2 NIL -- your modeling of broadcast NIL model, you're
3 not using a before-and-after analysis; right?

4 A. I mean, there are certain -- there are
5 elements that are before and after in that.

6 Q. What are those?

7 A. I mean, I'm looking at prior years' media
8 rights and media contracts.

9 Q. Okay. So you say in the third -- section
10 of your report regarding third-party NIL that you're
11 applying a before-and-after analysis; correct?

12 A. Correct.

13 Q. Okay. Do you believe you're using the
14 same form of analysis in the Broadcast NIL section?

15 A. It's not that same form of analysis. We
16 have this natural experiment in the individual NIL
17 payment analysis because it's been allowed and it's
18 happening in front of us. And so we're using that
19 information to -- to think about what would have
20 happened in the past.

21 For the broadcast NIL, I'm using other
22 information to think about what would have happened
23 in the past.

24 Q. So can I turn your attention to page --
25 give me a minute, please -- 180 -- or paragraph 180

1 on page 95.

2 Actually, can I turn your attention to
3 paragraph 185 on page 97? Sorry about that.

4 A. That's all right.

5 Yes. I see it.

6 Q. So you say here, "My common methodology
7 for measuring these class-wide damages" -- and
8 you're referring here to third-party NIL -- "is then
9 based on the well-established before-and-after
10 approach."

11 Do you see that?

12 A. Yes.

13 Q. Okay. You would not say that you were
14 applying that well-established before-and-after
15 approach to the broadcast NIL class -- damages, are
16 you; is that correct?

17 A. So the broadcast class is using what some
18 people call yardsticks or benchmarks; right?
19 Sometimes they have elements of before and after.
20 And sometimes you can have both at the same time.

21 Q. Okay. So -- but you would describe the
22 broadcast -- your broadcast methodology as a
23 yardstick methodology; correct?

24 A. Generally, yes.

25 Q. Okay. And what is the yardstick that

1 you're using?

2 A. So I'm looking at -- at other uses of NIL
3 licenses. I'm relying on another expert, Ed Desser,
4 and his analysis. I'm relying on the -- the
5 economics of competition at the school and -- and
6 conference level and the nature of a football
7 broadcast from one conference to the next, the -- an
8 understanding of college athlete labor market in
9 terms of when -- when recruiting occurs out of high
10 school.

11 There's others that are listed in here;
12 I'm not remembering every single piece, but --

13 Q. But in terms of the yardsticks to which
14 you're drawing a comparison, would you agree with me
15 that those are group licensing deals involving the
16 NFL and the NBA?

17 A. So that --

18 MR. SIEGEL: Objection; asked and
19 answered.

20 THE WITNESS: So that's some of the
21 information, yes.

22 BY MR. KILARU:

23 Q. Okay. Would you call Mr. Desser's report
24 a yardstick?

25 A. No, but it's a piece of information that

1 applies in the same way that one might apply a
2 yardstick.

3 Q. Understood.

4 Would you describe your understanding of
5 the economics of competition as a yardstick?

6 A. Yes. In terms of seeing how competition
7 has played out in college sports over the years when
8 certain rules have changed; right? You see that
9 same competition and you can apply it, oh, well,
10 here's another currency used in the athlete --
11 potentially used in the athlete labor market.

12 And so relying on those other -- those --
13 that other historical yardsticks or -- yeah, they're
14 not benchmarks. They're yardsticks. I know those
15 phrases get mixed up. So if you need me to clarify
16 them, I will.

17 Q. No, that's fine.

18 When you say "other forms of currency,"
19 are you referring to cost-of-attendance stipends as
20 one example?

21 A. That's one example, yes.

22 Q. Are there any others?

23 A. That's sort of the main one.

24 Q. Okay. And you'd agree with me that
25 cost-of-attendance stipends do not involve a group

1 license?

2 A. Correct.

3 Q. Okay. And the other -- the NI- -- the
4 other group licensing contracts that you've looked
5 at or agreements you've looked at from professional
6 football and basketball, you'd agree that none of
7 those involve media rights; correct?

8 A. Would you define "media rights" that
9 you're using?

10 Q. They don't involve compensation related to
11 participation in a broadcast; correct?

12 A. Some of them have digital media elements
13 of them, but they're not -- a lot of those licenses
14 are -- I mean, they're not for the use of their NIL
15 in a -- let's say a live broadcast.

16 Q. Right. So none of those group licenses --
17 group licensing agreements you look at involve
18 payments related to the use of NIL in a live
19 telecast of a sporting event; correct?

20 A. I believe so, yeah.

21 Q. Okay. When you're calculating damages for
22 the men's basketball, women's basketball, and
23 football classes, you are calculating damages based
24 on a group license for the use of NIL in a live
25 telecast of a sporting event; correct?

1 A. Yes.

2 Q. As -- as we've discussed, the group
3 licensing contracts you look at are based on
4 professional sports; correct? They're from
5 professional sports, I should say.

6 A. The -- the licensing agreements? Yeah.
7 Like listed in Exhibits 578 or 567 or whatever.
8 Yes, those are from three different professional
9 sports. The same sports.

10 Q. Professional football, professional
11 basketball, men's basketball, and what else?

12 A. I think there's women's -- there may be
13 some women's basketball information.

14 Q. Okay. You'd agree with me that
15 professional athletes are employees; correct?

16 A. Yes.

17 Q. To your knowledge, there's been no
18 finding -- no school or conference in the -- in
19 college sports has concluded that student athletes
20 are employees?

21 MR. SIEGEL: Objection; calls for a legal
22 conclusion.

23 THE WITNESS: I mean, there's been
24 findings related to that, but -- but to my
25 knowledge, I don't think any of the universities --

1 other than the military academies -- treat their
2 athletes as employees. The military academies do.
3 They treat them as employees. They are employees.
4 They play sports. They get paid. People like to
5 watch.

6 BY MR. KILARU:

7 Q. To your knowledge, are any institutions in
8 the Power Five or any of the Power Five conferences
9 treating student athletes as employees?

10 MR. SIEGEL: Objection; calls for a legal
11 conclusion.

12 THE WITNESS: To my knowledge, not as
13 employees of their school based on their athletics.
14 Some of them may be employees at other aspects of
15 the school.

16 BY MR. KILARU:

17 Q. Based on like a work study job, for
18 example or something -- or some other employment,
19 but not related to athletics; right?

20 A. And I'm sort of curious, I'm -- I'm
21 thinking about when they have summer camps. I don't
22 know -- see, I don't know if they consider them
23 employees in that case or they pay them as
24 contractors. I'm not actually sure.

25 I know that some of them get paid for that

1 summer camp work. And that's athletics, but it's
2 not the performance on the team.

3 Q. You're not aware of any institution in the
4 Power Five that is treating student athletes as
5 employees based on their participation in live
6 football telecasts -- or live sports telecasts;
7 correct?

8 A. I think that's true.

9 Q. You'd agree that professional athletes
10 in -- well, can you -- professional athletes are
11 paid salaries that vary based on athletic talent;
12 correct?

13 A. I mean, within a set of rules, but, yes.
14 Those salaries can vary.

15 Q. Are you aware of any professional sports
16 labor market in which every participant is paid the
17 same amount?

18 A. Well, look at the college athletes for the
19 use of their NIL. They're all paid the same amount.
20 Zero.

21 Look at the college athletes, they're all
22 paid -- the ones who are on scholarship -- take 85
23 at a Power Five school; right -- they're all paid
24 essentially the same amount. It's tuition, room and
25 board, books, miscellaneous, and expenses.

1 Q. Right. My question was whether you were
2 aware of any professional sports labor market in
3 which every participant is paid the same amount.

4 A. And you're defining "professional sports"
5 as what?

6 Q. Well, how would you define it?

7 A. I mean, these athletes in college get
8 paid; right? Some people call them professional
9 sports. So if you're defining "professional sports"
10 as not college sports and not other amateur sports,
11 but as an example, NFL, NBA, et cetera, that they
12 get paid the same amount?

13 As I sit here, I can't think of a case for
14 them getting paid the same amount for their athletic
15 performances, but of course, this case is not about
16 athletic performances.

17 Q. You'd agree with me that in the NFL, in
18 the NBA, and in the WNBA, the players are
19 represented by players associations?

20 A. And -- and agents. There are players
21 associations in those leagues, yes.

22 Q. And the players associations bargain
23 collectively with the leagues and the teams under
24 the Federal Labor Relations Act?

25 (Interruption in proceedings.)

1 MR. KILARU: Let's go off the record.

2 THE VIDEOGRAPHER: The time is 10:28 a.m.

3 (Recess taken from 10:28 a.m. to 10:42 a.m.)

4 THE VIDEOGRAPHER: All right. We're back
5 on the record. The time is 10:42 a.m.

6 BY MR. KILARU:

7 Q. Dr. Rascher, a few minutes ago you stated
8 that one of the -- one of the yardsticks you used in
9 this case were group licensing payments involving
10 professional sports, professional football,
11 basketball, and women's basketball?

12 A. Yes.

13 Q. Okay. Do you believe that those group
14 licensing payments are being made in a labor market?

15 A. Since they're not -- I'd have to think
16 more about that.

17 Q. They're not, are they?

18 MR. SIEGEL: Objection; asked and
19 answered.

20 THE WITNESS: I would just have to think
21 more about the relationship between those contracts
22 and any -- any set of rules that -- that the NFL --
23 which is where -- you know, that the NFL and the
24 players association have agreed upon and that's
25 where the labor market is.

1 BY MR. KILARU:

2 Q. The labor market is between -- to use the
3 professional football example -- the NFL and the
4 players; correct?

5 A. It's sort of a -- it's sort of joint in
6 the sense that it's between the teams and the
7 players and the league and the players.

8 Q. But it doesn't involve, for example,
9 Topps?

10 A. Right. Just the way the -- the -- again,
11 I have to think more about it, but just the way the
12 rules are established; and in our case, are slightly
13 different than in that case.

14 MS. PARSIGIAN: Pardon me. I meant to
15 mention this at a break. Counsel, will you speak
16 louder?

17 MR. KILARU: Yeah.

18 Q. The -- just to use one of the examples you
19 used, there's a group license for Topps, which is a
20 player card company, with NFL players; correct?

21 A. Yes.

22 Q. And that contract is between the NFL
23 players and Topps; correct?

24 A. Yes.

25 Q. The teams in the league are not parties to

1 that contract?

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22 A. So it's not that simple.

23 Q. So what's your opinion?

24 A. It's -- it's not that simple. That's my
25 opinion.

1 Q. Your opinion is it's not that simple, you
2 have no other explanation?

3 A. Well, no, you didn't ask for another
4 explanation.

5 Q. Okay. What's your opinion as to what
6 you -- how you would characterize those payments;
7 are they in a labor market or not?

8 A. The -- the whole collective bargaining
9 sets up a situation and that's -- that's a labor
10 market -- or that's part of -- you know, that's
11 within the labor market to where the athletes in
12 football in the NFL, for instance, have agreed to,
13 say, have a group license. And that's all part of
14 that context. And then they can go out and market
15 that license.

16 So I'm saying it's not quite as simple as
17 you're making it. And I'm saying for college
18 sports, there's a -- there's a -- a slight
19 difference in the way that college sports is -- is
20 administered by the colleges and conferences in the
21 NCAA.

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25 A. I would say not in the traditional way we

1 think of as "labor," no.

2 Q. Is it -- are they purchasing labor in any
3 way that would make it a labor market?

4 MR. SIEGEL: Objection; compound.

5 THE WITNESS: So it depends on the
6 product. If everyone has to show up and they have
7 to spend a day taking photographs or something like
8 that, you know, that's providing some sort of labor
9 service.

10 BY MR. KILARU:

11 Q. It's a different form of labor service
12 than participating in an athletic contest; correct?

13 A. Yes.

14 Q. Okay. To your knowledge, the only
15 compensation for participating in a professional
16 sports contest, in the actual professional sports
17 game, comes through the salary that's paid from the
18 league, from the team to the player; correct?

19 A. Can you repeat the beginning of that?

20 Q. Yeah, sure.

21 The only compensation for participation in
22 an athletic contest is the salary that a player gets
23 from their team? In the NFL, for example.

24 A. That is true, with the caveat that there
25 may be players who get paid for appearances and how

1 often they appear in a game through some endorsement
2 they have or something like that.

3 So playing in that game, they get paid
4 from their team, their salary. That's primarily
5 what's happening. There may be payments that some
6 receive from, you know, some sort of licensee who's
7 decided they're having them endorse a product and it
8 requires them to play in a certain number of games
9 and all that.

10 Q. Okay. Now, you, in your report, conclude
11 that broadcast NIL constitutes 10 percent of the
12 value of each of the contracts that the conference
13 is signing for media distribution; correct?

14 MR. SIEGEL: Objection; misstates the
15 report.

16 THE WITNESS: For the purposes of damages,
17 I believe that a 10 percent royalty payment is
18 reasonable, it's reliable, the process is reliable;
19 and it's a conservative estimate of -- of the -- of
20 the value -- of the value of that -- of that NIL.

21 BY MR. KILARU:

22 Q. You'd agree that 10 percent figure is not
23 in the contracts itself; correct?

24 A. Which contracts?

25 Q. The broadcast contracts.

1 A. Correct.

2 Q. Okay. What is your basis for coming to
3 the 10 percent figure?

4 A. Well, some of it is the expertise of
5 Ed Desser, who, you know, spent some time and has an
6 entire report on -- and that's one of the topics in
7 his report, you know, with his background.

8 Another is the -- as I mentioned, the
9 dozens of uses of digital and -- and media, but then
10 hundreds of -- of contracts for the use of NIL in
11 the NFL and the NBA, and the -- and WNBA.

12 So that's -- I think those are the main
13 sources of -- of that 10 percent reasonable royalty.

14 Q. Okay. So one is from -- just to recap
15 what you said. One source is Mr. Desser's report;
16 right?

17 A. Yes.

18 Q. Okay. And another source are the group
19 licensing contracts we discussed that do not involve
20 payments related to participation in live football
21 telecasts; correct?

22 MR. SIEGEL: Objection; compound.

23 THE WITNESS: They're the contracts that
24 some of them use media and they pay the athletes for
25 the use of that media at a 10 percent royalty rate.

1 BY MR. KILARU:

2 Q. I just want to take you back to my
3 question.

4 The other source you relied on are group
5 licensing contracts that do not involve payments
6 tied to participation in live football telecasts;
7 correct?

8 A. In live football telecasts; correct.

9 Q. Okay. A few minutes ago, you said -- let
10 me make sure I understand this -- the payments that
11 you model in the broadcast NIL damages are from the
12 conferences to student athletes; correct?

13 A. Correct.

14 Q. Okay. Are you aware of any other form of
15 compensation provided to student athletes that comes
16 directly from the conference?

17 A. So there are forms of payment and I don't
18 know like when you go to a tournament, the
19 conference tournament and the athletes get per diems
20 and that's sort of set -- often set at the
21 conference level -- I don't know physically if the
22 conference person is giving them -- paying the money
23 or how they -- or do they just give it to the school
24 and the school, you know, basically is just the --
25 the conduit.

1 But, you know, a lot of the revenues that
2 come from conferences to the schools -- right? --
3 then the schools, you know, use some of that revenue
4 to -- to give to the athletes.

5 Or when you go to a bowl game and you get
6 access to -- you know, who is running the bowl game?
7 Is it -- you know, is it -- or is it a conference
8 championship game and you have the ability to -- to
9 earn some sort of -- not prize money, I shouldn't --
10 but some sort of payment for, you know, being at
11 that game that the conferences are allowed to give.

12 I don't know, again, is the conference
13 directly doing it, or is it just more convenient
14 to -- to give that money to the athlete through
15 their school?

16 Q. Okay. Just going back to my question. In
17 your model, the payments for broadcast NIL come
18 directly from, for example, the SEC to an athlete at
19 the University of Georgia; correct?

20 MR. SIEGEL: Objection; vague and
21 ambiguous as to "come directly."

22 THE WITNESS: The -- so the broadcast
23 contracts are between the conference and the media
24 company. And the conferences essentially bring the
25 NILs of the athletes along with those contracts to

1 the media companies so they're aware that the
2 media -- so they're able to sort of indemnify the
3 media companies.

4 And so that's where the -- that's where
5 the sort of contract takes place. And since a
6 portion of that contract would be going to the
7 athletes, then it would go from the conferences to
8 the athletes.

9 BY MR. KILARU:

10 Q. Okay. Just turning -- can I turn your
11 attention to paragraph 156 of your report.

12 A (Witness complies.)

13 Q. So the second sentence of that paragraph
14 reads, "I adopt a model of competition in which the
15 Power Five conferences who enter into the broadcast
16 agreements that provide for NIL rights to the
17 network compete with each other and make the
18 broadcast NIL payments to class members."

19 Did I read that right?

20 A. Yes.

21 Q. And you agree with that statement;
22 correct?

23 A. Yes.

24 Q. Okay. And sitting here today, you do not
25 know of any other payment that is made from the

1 conference directly to a student athlete?

2 MR. SIEGEL: Objection; asked and
3 answered.

4 THE WITNESS: So as I said, there are
5 payments stemming from the conferences that go to
6 the athletes. I don't know if they pass through the
7 hands of the -- of the schools or not.

8 BY MR. KILARU:

9 Q. Okay. Other than the two examples you
10 gave, any other examples you can -- come to mind of
11 payments that may be made from a conference to a
12 student athlete?

13 A. Not as I sit here, no.

14 Q. Okay. Can I turn your attention to
15 Exhibit 12 in your report, which is on page 94?

16 A (Witness complies.)

17 Q. And I should put on the record that I
18 believe this is Network Strictly Confidential, but
19 we discussed before the deposition and because no
20 one is participating in this deposition who has an
21 NSC restriction, we are just sort of moving forward
22 for purposes of the deposition.

23 But, Dr. Rascher, let's just look, for
24 example, at -- so Exhibit 12 is the conference
25 broadcast damages per class member; correct?

1 A. Yes.

REDACTED - NSC

10 Q. Okay. And these amounts represent a purse
11 scholarship recipient share of the 10 percent -- let
12 me take a step back at how you got here.

13 First, you multiply the broadcast revenues
14 for each of the ACC and the SEC by 10 percent;
15 correct?

16 A. So that's part of it.

17 Q. I'm not saying that's the full thing.

18 A. So there's other --

19 Q. Right. The first step is you multiply the
20 broadcast revenues for the ACC and SEC by
21 10 percent; right?

22 A. Correct.

23 Q. Then you multiply whatever comes out of
24 that by 75 percent, because your model says that
25 75 percent of those revenues are tied to football;

1 correct?

2 A. Yes.

3 Q. Okay. And then you divide that by the
4 number of scholarship recipients in that conference
5 in a given year; correct?

6 A. Yes.

REDACTED - NSC

14 A. The SEC -- its schools are competing to
15 get football athletes. And they would want to be
16 able to compete with these other conferences --

17 Q. Okay, but let's just --

18 A. -- in order to be able to get those
19 football athletes.

20 Q. Let's go through the table.

REDACTED - NSC

REDACTED - NSC

17 A. But the schools are competing on all sorts
18 of dimensions: Cost of attendance; the school; the
19 coach; the ability to turn pro; the training; the
20 education; the location; the -- you know, chance to
21 play games in certain cities and home cities.

22 I mean, there's so many elements and
23 there's tons of research on this, as you may or may
24 not know, showing how athletes make decisions in
25 order to -- to choose different schools.

1 So this is just one element of -- of those
2 decisions that -- that an athlete would use to make
3 a decision.

4 Q. Okay. Your model doesn't assign a value
5 to cost of attendance for each conference, does it?

6 A. In this report?

7 Q. In your model. In this case, yes.

8 A. No.

9 Q. Okay. Your model doesn't assign any value
10 to one school versus another, does it?

11 A. I don't know what that means.

12 Q. You don't assign sort of amount of benefit
13 that a student athlete gets from one particular
14 school versus another; correct?

15 MR. SIEGEL: Objection; vague and
16 ambiguous as to "amount of benefit."

17 THE WITNESS: I don't really know what
18 you're saying, but --

19 BY MR. KILARU:

20 Q. A few minutes ago, you said that one of
21 the factors that goes into how athletes make
22 decisions about which schools to go to are the
23 school.

24 A. Yes.

25 Q. Okay. So you don't assign in your model

1 any economic value to what you described as "the
2 school"; correct?

3 A. Correct.

4 Q. Okay. You don't assign any economic value
5 to the ability to turn pro?

6 A. Correct.

7 Q. You don't assign any economic value to the
8 training?

9 A. So implicit in all of this is that the
10 conferences are competing as they do now. So all of
11 those values are part of the athlete labor market.
12 They already exist. To measure damages in the past
13 in the but-for world, that athlete labor market is
14 assuming to exist similarly other than this one
15 change in rules.

16 So those values are all baked into the
17 athlete labor market. And the decisions they choose
18 and, you know, which schools are -- you know, which
19 conferences and schools are recruiting at a higher
20 level than the others, that's all built into this
21 model. I'm not changing any of that.

22 Q. Right.

23 A. So -- so it's built in regardless of what
24 an individual school's value is to a particular
25 athlete.

1 Q. But you haven't assigned a specific value
2 to training; correct? In your model?

3 A. Correct.

4 Q. You haven't assigned a specific value to
5 education?

6 A. Correct. But as I said, they're in --
7 those are in -- they're in the model of competition.
8 They're part of the labor market.

9 Q. Just going through your list here.
10 You haven't assigned an economic value to
11 location?

12 A. No.

13 Q. Or the chance to play games in certain
14 cities and home cities; right?

15 A. Correct.

16 Q. Okay. So just looking at broadcast NIL
17 standing alone, you agree with me that in 2016 for

REDACTED - NSC



REDACTED - NSC

14 A. So if -- again, if 10 percent is a
15 reasonable conservative estimate of -- of the NIL
16 portion, the value portion of the broadcast
17 agreement, if it tried to pay more -- if it tried to
18 pay more, it would be violating -- potentially
19 violating the NCAA's rules on pay for performance.

20 And so, again, 10 percent is a reasonable
21 estimate of what that NIL value is worth. My
22 assumption is those other rules are still in place
23 and that a conference or a school can't go above
24 those amounts or else they would be violating the
25 NCAA's rules.

1 Q. So your report -- your opinion is that in
2 the but-for world, the NCAA would have a rule
3 prohibiting any payment for broadcast NIL above
4 10 percent of a conference's media revenues?

5 A. In the but-for world?

6 Q. Yes.

7 A. No, I -- I've measured a reasonable
8 estimate of what those NIL values are. I think the
9 rules would be -- what we've talked about earlier,
10 which was there wouldn't be rules on -- on limiting
11 payments for the use of NIL, but there are rules
12 on the -- on payments, say, above NIL, which seems
13 to be what you're -- you're talking about.

14 Q. You believe payment -- there would still
15 be a rule on any payment that is not -- prohibiting
16 any payment that is not tied to NIL?

17 A. Yes.

18 Q. Okay. And you said a few times that
19 10 percent is a reasonable estimate.

20 Do you have any other number that you've
21 calculated in your report besides 10 percent?

22 A. I'd have to look at my report, but I don't
23 think so. I know I talk about sort of 10 to
24 15 percent being -- being what Ed Desser, I think,
25 is finding as being reasonable. And so I'm being

1 conservative, right, in choosing 10 percent.

2 Q. But you don't have any analysis that ties
3 to any number besides -- I'll even grant you for
4 purposes of this 10 to 15 percent?

5 A. A different number than that?

6 Q. Yes.

7 A. For broadcast NIL?

8 Q. For broadcast NIL.

9 A. I don't think I have a different number,
10 no. I mean, that's the reasonable royalty that I'm
11 using.

12 Q. And you have not offered an opinion that
13 any number above 15 percent would be a reasonable
14 estimate; correct?

15 A. So what I'm saying is it's a conservative
16 estimate. You know, 10 to -- 10 percent, 10 to
17 15 percent is a reasonable conservative estimate.
18 I'm not using a different number than that. I'm
19 not -- I don't -- yeah, that's -- that's the
20 analysis -- I think that's a fair comp to -- to use
21 in this case.

22 Q. Right. But I just want to make sure I get
23 an answer to the question I asked, which is: You
24 have not offered an opinion that any percentage
25 above 15 percent would be a reasonable estimate of

1 NIL -- broadcast NIL value; correct?

2 MR. SIEGEL: Asked and answered.

3 THE WITNESS: Correct. Based on the
4 analysis in this case and the knowledge and facts
5 and everything, 10 to 15 percent is a reasonable
6 estimate, yes.

7 BY MR. KILARU:

8 Q. And not a number above 15 percent;
9 correct?

10 A. Correct.

11 Q. Okay. And my understanding -- and you
12 should correct me if I'm wrong -- is that you
13 haven't run any models at any number besides
14 10 percent?

15 So, for example, you haven't created
16 Exhibit 12 based on a 15 percent number; correct?

17 A. Correct.

18 Q. Could we turn to paragraph 160 of your
19 report. It's on page -- it starts on page 78.

20 MR. SIEGEL: 160? Is that -- paragraph
21 160?

22 MR. KILARU: Yes.

23 THE WITNESS: (Witness complies.)

24 BY MR. KILARU:

25 Q. Okay. The first sentence there reads,

1 "Under competitive conditions, neither side of the
2 transaction has a compelling interest in ex-post
3 contracting"; correct?

4 A. Yes.

5 MR. SIEGEL: Mr. Kilaru, did you want to
6 give him time to read the full paragraph or just
7 start answering?

8 MR. KILARU: I'm asking him about the
9 sentence. But if he would like to read the full
10 paragraph, he can tell me.

11 THE WITNESS: That's fine. That -- that
12 is the first sentence.

13 BY MR. KILARU:

14 Q. Okay. And what you're getting at there is
15 that -- as I understand it -- players in your
16 opinion -- student athletes do not have an interest
17 in having NIL payments decided after enrollment;
18 correct?

19 A. Let me read the rest of it --

20 Q. Sure.

21 A. -- because I think that's teeing up the
22 rest of the paragraph.

23 (Witness reviews document.)

24 Okay. So what was your question?

25 Q. Sure. I think -- the two sides you refer

1 to there are student athletes and the conferences;
2 correct?

3 A. Well, the student athlete and the school
4 that they're trying to attend.

5 Q. Well, the payment's being made by the
6 conference; right?

7 A. Right. But what we see now is when the
8 student athletes sign away their NIL rights, they're
9 doing that typically through a -- a document
10 that's -- at least historically at the school level.

11 Now, I know some schools now are
12 requiring -- I know that's sort of changed, but --
13 at the school level.

14 So they're sort of -- they're in the
15 athlete labor market trying to choose a school;
16 right? And then there's, you know, a sort of sign
17 here and this is -- you know, your scholarship and
18 da, da, da, da, da, da, and here, sign this other
19 document and this puts you into the group license
20 for the -- you know, for the broadcast agreement.

21 Q. Right. So let me break that down for a
22 second.

23 Today, the student athlete signs -- may or
24 may not sign an agreement with their institution
25 regarding an assignment of NIL rights; correct?

1 A. I believe that's true, yes.

2 Q. In your model, the conference is paying
3 the student athlete in relation to the NIL right in
4 a live telecast; correct?

5 A. Yes.

6 Q. Okay. So in this section -- in this
7 paragraph of your report, it appears that you're
8 saying student athletes don't have an interest in
9 having their broadcast NIL payment be determined
10 after enrollment; correct?

11 A. Yes.

12 Q. And you're saying the conferences don't
13 have an interest in having broadcast payments be
14 determined after enrollment; correct?

15 A. Yes.

16 Q. Okay. And I believe you say that's
17 because the school won't know in advance -- or the
18 conference, I should say, won't know in advance who
19 will earn certain amounts; correct? Based on how
20 the season unfolds.

21 A. It -- it creates sort of ex-post
22 contracting problems. It creates hold-up --
23 potentially hold-up problems if it all happens
24 afterward.

25 So it's an equilibrium and since there's

1 competition across the conferences and equilibrium
2 is, hey, sign with us and you know what you're going
3 to get even if you get hurt or even if you don't
4 play much; right?

5 And so after the fact, if all of a sudden
6 players started appearing in games and the -- they
7 don't have the NIL rights yet, the broadcaster
8 doesn't, then that may create a problem for the
9 broadcaster.

10 Q. Okay. So from the conference's point of
11 view, they need to have every scholarship athlete
12 upfront; correct?

13 A. Essentially anyone who's going to appear.

14 Q. Well, in your model, you don't have any
15 broadcast NIL damages for certain people who appear
16 in the telecast.

17 We established that earlier; right?

18 A. You mean for people who are not on full
19 scholarship?

20 Q. Yes.

21 A. So they're also giving up their NIL rights
22 now for zero; right? They're often giving up their
23 athletic services rights for zero, right, if they
24 don't get a scholarship.

25 Q. And in your model, they're also getting

1 zero, correct, for broadcast NIL?

2 A. Well, I'm only measuring damages for the
3 class members. So one way to do that is in the
4 model, they get zero, like they have already agreed
5 to now. You know, they've already proven -- shown
6 that they're willing to -- to play without any sort
7 of scholarship or anything.

8 Or one could do a model where you used the
9 roster instead of the sort of 85 scholarship members
10 and do it exactly the same way.

11 Q. Is there a reason why you didn't use the
12 roster method?

13 A. I think -- I don't have a -- some of it is
14 I think access to information in terms of who's --
15 you know, how many people are on different rosters.

16 But, no, I don't have a -- this is, I
17 think, a fair and reasonable way to do it and I
18 think it fits with the economics of walk-ons, let's
19 call them walk-ons, players who don't have a
20 scholarship. Their sort of position in the labor
21 market as being less -- you know, they're not able
22 to get a scholarship.

23 Q. So if a kicker in your model in 2018 is
24 not on scholarship, why would they agree to give the
25 broadcaster their NIL for zero when they are going

1 to appear in a game?

2 A. So first of all, they already do agree to
3 that.

4 Q. But I'm talking about in your but-for
5 world.

6 A. Right. But they've already -- they --
7 they've shown that they're willing to essentially
8 play for -- without compensation. So that's --
9 that's one reason.

10 Q. Isn't it true that in the current world,
11 every student athlete has shown that they're willing
12 to play without compensation for their broadcast
13 NIL?

14 A. But they're not willing to play without
15 compensation. So there's athletes who are choosing
16 among schools and some of those schools are offering
17 them, say, scholarships -- often full scholarships
18 in the sports that we're talking about because
19 they're encounter sports; right?

20 Q. Let me make sure I understand this.

21 On the football team -- let's just take
22 two players. A quarterback in 2018 who is starting
23 and a kicker in 2018 who has no scholarship but
24 plays in games. Okay? That's my hypothetical.
25 Correct?

1 Are you with me on that?

2 A. Yes.

3 Q. Okay. Today, the quarterback is agreeing
4 to get paid zero for their broadcast NIL; correct?

5 A. Right, but not for their athletic
6 services.

7 Q. Understood. But I'm just asking you about
8 broadcast NIL.

9 A. But in the labor market, they're --
10 they're combined -- or they're -- they're, you know,
11 affiliated with each other. It's all part of that
12 decision process.

13 Q. Okay.

14 A. So you're separating it out, which is
15 fine. But I'm telling you that isn't the decision
16 that the athlete's making.

17 Q. I'm just trying to understand why the
18 kicker is not demanding some share -- my kicker in
19 my hypothetical is not demanding or getting some
20 share of broadcast NIL if they're going to appear in
21 the broadcast and the broadcaster needs to be able
22 to show them.

23 MR. SIEGEL: Objection; asked and
24 answered.

25 THE WITNESS: So they're already showing

1 they're willing to play without sort of any
2 payment -- you know, without a scholarship or
3 anything.

4 BY MR. KILARU:

5 Q. So it's your opinion that they would agree
6 to give their right in the broadcast to the
7 broadcaster for zero as opposed to holding out?

8 A. I mean, they already do that. And if my
9 model -- or in this model for class certification
10 purposes, they're also agreeing to do that. One
11 could construct a model that looks at the rosters
12 instead and does some sort of, you know, adjustment
13 for that.

14 Q. You haven't done that; right?

15 A. No.

16 Q. Okay. Going back a minute just to the way
17 this sort of construct works. Is it my
18 understanding that the NCAA rules that would remain
19 in place in the but-for world would permit a
20 different amount of broadcast NIL payment for each
21 conference?

22 A. In the but-for world, different payments
23 could go to different athletes in different
24 conferences. Just like in the exhibit.

25 Q. Right.

1 A. Is that --

2 Q. So the NCAA rules would permit different
3 payments for student athletes depending on the
4 conference that they're in?

5 A. Well, the NCAA -- if they lose this case,
6 they don't -- they can't control -- I mean, we see
7 that now. I mean, look at the individual NIL
8 payments that athletes are getting. It varies by
9 conference; right?

10 In some conferences, athletes are getting
11 more than in other conferences. So it's sort of
12 consistent with how they're already treating the NIL
13 rules.

14 Q. Is it your opinion that there's a
15 measurable variance in NIL payments in the current
16 market based on conferences?

17 A. I don't know what you mean by that.

18 Q. Well, you just said: Right now we see
19 variances among conferences in third-party NIL
20 payments that are getting received.

21 I'm just asking: Is it your opinion that
22 there's a significant variance by conference as
23 opposed to by school in the current market for
24 third-party NIL?

25 MR. SIEGEL: Objection; compound and

1 misstates testimony.

2 THE WITNESS: What I'm saying -- you asked
3 me about a rule in the but-for world. And I'm
4 telling you the rule we have in the current world
5 allows for different payments across conferences.

6 BY MR. KILARU:

7 Q. And across schools?

8 A. Yes.

9 Q. Okay. You -- in your model, you would
10 agree that you've fully assigned out the 10 percent
11 of NIL value in -- per to each conference; correct?

12 A. What do you mean "fully assigned out"?

13 Q. If you haven't saved -- like every dollar
14 of the 10 percent is being allocated to class
15 members in your formula; correct?

16 A. Yes.

17 Q. That would include student athletes who
18 had a season-ending injury before a season in which
19 they played -- were slated to play; correct?

20 A. Sorry. This fell off.

21 It's not sticking very well.

22 I'm sorry. Could you ask that again?

23 Q. Of course.

24 That includes -- so you -- your model
25 assigns damages to student athletes who had a

1 season-ending injury before their first competition;
2 correct?

3 A. If -- I mean, if they have a full
4 scholarship, yes.

5 Q. Okay. It assigns damages to a student
6 athlete on a full scholarship who was academically
7 ineligible for a season?

8 A. If -- yeah, if they're part of the
9 roster -- if they're part of the roster and have a
10 full scholarship.

11 Q. Okay. It assigns damages to a student
12 athlete on full scholarship who transferred and had
13 to sit out a year before playing; correct?

14 MR. SIEGEL: Objection; compound.
15 Incomplete hypothetical.

16 THE WITNESS: I think if they're on a
17 roster and they have a scholarship, yes.

18 BY MR. KILARU:

19 Q. So prior to 2021, you're aware that NCAA
20 rules required a -- just to give one example -- a
21 men's football player to sit out for a year after
22 transferring to a different institution; right?

23 A. I don't know the exact year. I know
24 that's sort of been the tradition.

25 Q. Well, I'll just represent to you that in

1 2018, that was the rule.

2 So if a player transferred from Georgia to
3 Ohio State in that year, your model would calculate
4 them as getting damages for payments from Ohio State
5 even though they didn't play in the game; correct?

6 MR. SIEGEL: Objection; incomplete
7 hypothetical.

8 THE WITNESS: Wait. They transferred from
9 which school to which school?

10 BY MR. KILARU:

11 Q. Georgia to Ohio State.

12 A. Okay. Well, some -- as you know, some
13 athletes petition and they're allowed to play. But
14 you're talking about an athlete who is not allowed
15 to play.

16 Yes, currently for purposes of class
17 certification to show that this model can work, that
18 player is -- is -- if they're in the class getting
19 assigned a payment for the use of their NIL.

20 Q. Your model would assign -- assigns damages
21 to an individual on full scholarship who was
22 suspended for a year for failing a drug test, for
23 example?

24 A. Again, as long as they meet the terms
25 of -- you know, they're on the roster, they're a

1 class -- they're a full GIA recipient during the
2 class, then, yes.

3 Q. Okay. So just to be clear, these four
4 scenarios that we've discussed, your model concludes
5 that the conference would make a payment to these
6 players even though they may not appear in a single
7 game or in a single telecast; correct?

8 A. I mean, that -- for them and also for
9 someone else who just gets -- doesn't appear in a
10 telecast, but they happen -- for all sorts of
11 reasons, that they do get injured -- you know, for
12 whatever reason -- they don't end up -- so they
13 wouldn't be the only -- you know, some other
14 students, because they sign up ahead of time with an
15 expectation to play, and the school has an
16 expectation that they're going to play, that's why
17 they're -- that's why they receive the payment.

18 Q. Now, in the competition that you're
19 modeling, you'd agree that the conferences would
20 like to be able to pay more to student athletes that
21 they want to recruit to the conference; correct?

22 MR. SIEGEL: Objection; misstates
23 testimony.

24 But you can answer it.

25 THE WITNESS: So the conferences want to

1 pay more or the schools?

2 BY MR. KILARU:

3 Q. Well, you've modeled conference-level
4 competition; correct?

5 A. Right. But it's within the context of
6 schools competing for athletes.

7 Q. You agree that the schools would want to
8 pay more for the athletes that they're recruiting;
9 correct? Than other schools; correct?

10 MR. SIEGEL: Objection; misstates
11 testimony. Incomplete hypothetical.

12 THE WITNESS: In general, the schools that
13 are at the maximum number of scholarships and
14 amount -- dollar amounts of scholarships, yeah,
15 they -- they've indicated based on their actions
16 that they want to pay the athletes more than they're
17 currently paying them.

18 BY MR. KILARU:

19 Q. You'd agree that these schools or
20 conferences could pay more for the student athletes
21 who actually appear in a broadcast if they weren't
22 making payments to all the people we've just
23 discussed?

24 A. What now? They could pay more? What --

25 Q. Yes.

1 A. The schools or the conferences?

2 Q. Well, your model is about the conferences;
3 correct?

4 A. I know, but it has the school competition
5 as part of it.

6 Q. But the schools within a conference could
7 pay more to, for example, a five-star quarterback if
8 they were not making payments to a student athlete
9 who sat out for a drug test or an injury or academic
10 ineligibility who was on full scholarship; correct?

11 MR. SIEGEL: Objection; beyond the scope
12 of his opinion. Vague and ambiguous.

13 THE WITNESS: I mean, I don't -- I think
14 the conferences would -- the way that the voting and
15 the membership works is that they wouldn't want one
16 of their schools to be able to pay a bunch more to
17 some athletes than the other schools. And so...

18 BY MR. KILARU:

19 Q. Can I turn your attention to Exhibit 12?

20 A (Witness complies.)

21 Q. This is the chart that we were talking
22 about a few minutes ago. It's on page 94.

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED - NSC

9 A. As the model is currently described for
10 the class certification purposes, yes.

11 Q. Okay.

12 A. But all of those are -- are amenable to --
13 if it would need be, amenable to adjustments to a
14 class-wide basis.

15 Q. Do you sitting here today know how you'd
16 do that? Do you have a methodology for doing that?

17 A. I think the squad list note who is
18 eligible. But as I sit here, I would have to look
19 at the information. But it is a -- it is known --
20 it is knowable -- I don't want to be Don Rumsfeld.
21 It is knowable that you can determine which athletes
22 are eligible to a particular team or not. The
23 school knows that. The coaches know that. The
24 athletes know that. Right? Typically, the
25 conferences know that.

1 And so it's something that if it were to
2 be an issue, if it were important, it's something
3 that's -- you know, that's notable.

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 A. I would have to think more about that. I
17 feel like that doesn't fit sort of within the use of
18 the NIL.

19 Q. Why is that?

20 A. Because it's sort of implying that the
21 other athletes' NIL usage all of a sudden goes up a
22 little bit. Like it doesn't feel like that's -- all
23 of a sudden it's going up above some threshold that
24 makes it look like it's pay for performance.

25 So I haven't thought -- I -- I don't

1 really have an answer, as I sit here, for your
2 hypothetical.

REDACTED - NSC

6 MR. SIEGEL: Objection; incomplete
7 hypothetical. Calls for speculation.

8 THE WITNESS: I mean, if -- if in the --
9 if 10 percent is a reasonable estimate and it's not
10 conservative, in other words, it's right on, then in
11 this case, they wouldn't necessarily want to. They
12 would be competing up to that spot.

13 BY MR. KILARU:

14 Q. They're trying -- a school that's trying
15 to get a student athlete to come to their school
16 versus other schools would like to be able to make
17 the best offer possible; correct?

18 A. But it has to fit within the NCAA rules.

19 Q. Okay. But as we talked about earlier, the
20 rules you're positing would prohibit compensation
21 being distributed above 10 percent; correct?

22 MR. SIEGEL: Objection; misstates
23 testimony.

24 THE WITNESS: Above for the use for their
25 NIL. And I'm using 10 percent as a reasonable

1 estimate for the purposes of damages at this class
2 certification stage.

3 In a future world -- right? -- perhaps a
4 school or a conference is petitioning to the NCAA
5 trying to claim why it thinks it should be
6 11 percent. That may happen in the future. But I'm
7 using 10 percent as a reasonable estimate for the
8 past.

9 BY MR. KILARU:

10 Q. I understand that.

11 But the 10 percent is a fixed amount for a
12 school in a conference; correct? In your model.

13 So for 2018, there's a fixed amount,
14 10 percent for the Big 10; correct?

15 A. For the purposes of measuring damages,
16 yes.

17 Q. Yes. And that's the only measure you put
18 in your report; correct?

19 A. For broadcast?

20 Q. For broadcast NIL, yes.

21 A. I'm using 10 percent is the number I'm
22 using in my report, yes.

23 Q. Okay. Let me ask you about something
24 slightly different, which is you'd agree that an
25 alternative possibility would be for conferences to

1 enter into agreements that condition access to
2 broadcast NIL on certain benchmarks that a student
3 athlete has to achieve?

4 A. I'm not following. I'm sorry.

5 Q. So, for example, the -- well, let me ask
6 you about a very specific example.

7 Could we give him Exhibit -- Tab 12. This
8 will be Exhibit 2.

9 (Exhibit 2 marked.)

10 BY MR. KILARU:

11 Q. I'll give you a minute to read it, Doctor.
12 Let me know when you're ready.

13 A. (Witness reviews document.)

14 I see. Okay.

15 Q. Okay. Doctor, I take it you're familiar
16 with the Alston payment?

17 A. Yeah.

18 Q. A payment that can be made of up to \$5,980
19 per semester?

20 A. Yes.

21 Q. Are you aware of any restriction that
22 precludes schools from making that payment to every
23 student athlete on a football roster?

24 MR. SIEGEL: Objection; calls for a legal
25 conclusion.

1 THE WITNESS: I'm not aware of that, no.

2 BY MR. KILARU:

3 Q. Same question with basketball and women's
4 basketball, are you -- and men's basketball and
5 women's basketball, are you aware of any restriction
6 that would prevent a school from just making the
7 payment to everyone?

8 MR. SIEGEL: Same objections.

9 THE WITNESS: No, I'm not aware of that.

10 BY MR. KILARU:

11 Q. This article that I think you've had a
12 chance to read, talks about how Wisconsin is
13 implementing that payment.

14 Would you agree with that?

15 A. It describes an example of how it works in
16 Wisconsin, yes.

17 Q. So if you look at the second page, the
18 article mentions that "The undergraduate graduation
19 award" -- this is in the third full paragraph -- "is
20 contingent upon completion of an undergraduate
21 degree. Through this award, an athlete can earn up
22 to \$2,500 per semester capped at 10 semesters."

23 Correct?

24 A. I see that.

25 Q. So assuming that that's a correct

1 statement of the policy, Wisconsin is only paying
2 that 25,000 -- that \$2,500 a semester to student
3 athletes who complete their degree; correct?

4 A. That's what it looks like here, yes.

5 Q. Okay. If you look at the next page,
6 there's a discussion about how student athletes can
7 earn \$490 per semester by remaining academically
8 eligible and on an active roster; correct?

9 A. I see that, yes.

10 Q. But in order to get that payment --
11 assuming this is a correct statement of the
12 policy -- the student athlete has to both remain
13 eligible and on a roster for -- for the season;
14 correct?

15 A. I see that.

16 Q. Okay. And you would agree with me that
17 you have not done any assessment of how institutions
18 are implementing the Alston payment; correct?

19 MR. SIEGEL: Objection.

20 THE WITNESS: I'm aware --

21 MR. SIEGEL: Beyond the scope of his
22 opinions offered in this case.

23 THE WITNESS: I'm aware that many schools
24 are doing it and they're doing it in ways similar to
25 this and that some are doing it differently.

1 BY MR. KILARU:

2 Q. Okay. But have you done any assessment of
3 how the schools are actually doing it?

4 MR. SIEGEL: Same objections; beyond the
5 scope of the opinions offered in this case.

6 BY MR. KILARU:

7 Q. Doctor, do you believe that's beyond the
8 scope of your opinions in this case?

9 A. I do.

10 Q. Okay. You haven't done any assessment of
11 that; correct? Of how individual institutions are
12 providing the Alston payment to student athletes;
13 correct?

14 A. Again, other than being aware that
15 different schools are doing it differently, I don't
16 know that you would determine that as an assessment
17 or not, but -- and sort of looking at the adoption
18 periods and things like that.

19 Q. And to your knowledge, no -- none of --
20 those payments are not being made by conferences;
21 correct?

22 A. Correct. To my knowledge.

23 Q. Okay. I want to talk about the student
24 athlete side of this.

25 So you'd agree that --

1 MR. SIEGEL: So this same document?

2 MR. KILARU: No, no. We're done with the
3 document. You can set that aside. Thank you.

4 Q. You mentioned -- you mention in your
5 report that student athletes do not have any
6 incentive to try to get a different amount of
7 broadcast NIL prior to enrollment; correct?

8 MR. SIEGEL: Objection; misstates
9 testimony.

10 THE WITNESS: I don't know what you mean
11 by that.

12 BY MR. KILARU:

13 Q. Okay. So is it -- in your report -- or in
14 your analysis, do you believe that a five-star
15 quarterback recruit has the same incentive to argue
16 for an amount of broadcast NIL as a backup offensive
17 lineman going into the recruiting process?

18 MR. SIEGEL: Vague and ambiguous as to
19 "incentive."

20 THE WITNESS: I mean, they have similar
21 incentives that they have now, which is, hey, I'd
22 like a bigger scholarship, but that seems to be what
23 the offer is. That seems to be the rules, you know,
24 at the conference level, if it's certain things or
25 at the NCAA level and at the school level.

1 MR. KILARU: Right.

2 THE WITNESS: So, of course, athletes are
3 trying to get the best deal for themselves not just
4 financially, though, for all the other pieces of
5 what the labor market's about. So I think, you
6 know, these athletes all have incentives to try to
7 push for more money, sure.

8 BY MR. KILARU:

9 Q. In your model --

10 A. And some of them are doing that outside
11 of, you know, using individual NIL payments.

12 Q. Right. But in your model, just using
13 2018, for example, you're a student athlete coming
14 into a particular institution in that year, they're
15 not asking for a different amount of broadcast NIL
16 based on their own perceived value; correct?

17 MR. SIEGEL: Objection; misstates the
18 report. Misstates testimony.

19 THE WITNESS: They're being offered the
20 conference's offer and they're making decisions
21 based on that and then, of course, all the other
22 aspects we've talked about that they make decisions
23 based on.

24 BY MR. KILARU:

25 Q. And is it your view that a five-star

1 quarterback would have no incentive to argue for
2 more than their proportional share of 10 percent?

3 A. If the conference has a rule, then that's
4 the rule. I mean, of course, they're going to argue
5 for more of the other payments too. They want a
6 larger Alston award, you know. They want a higher
7 cost of attendance payment. They want student
8 athlete opportunity funds and SAF funds; right?

9 And -- you know, I mean, they're going to
10 argue for what they're going to argue for. I'm not
11 saying that that's going to change in the but-for
12 world.

13 Q. If a student athlete transfers to a
14 different institution -- so let me give you an
15 example.

16 Are you familiar with a student athlete
17 named Caleb Williams?

18 A. Yes.

19 Q. He just won the Heisman trophy; right?

20 A. Yes.

21 Q. And he transferred from Oklahoma to the
22 University of Southern California before this last
23 season; right?

24 A. Correct.

25 Q. Now, in your model, Caleb Williams would

1 go to USC and he would just get his share of the
2 10 percent of NIL for the PAC 12's broadcast rights;
3 correct?

4 A. Yes.

5 Q. Your model does not account for the
6 possibility that he would hold out and say he's not
7 going to give over his broadcast rights and wants
8 more as a condition of transferring?

9 A. So if the conference has a rule --
10 right? -- then that's what he's going to be paid.
11 And it's my opinion that the conferences -- it's the
12 internal economics of the conference such that they
13 would have a rule like that. Especially for the
14 measurement of but-for world damages in the past.

15 Q. Would you agree with me that
16 conferences -- the Power -- the conferences for whom
17 you've modeled damages could pay more to individual
18 student athletes if they had fewer teams?

19 MR. SIEGEL: Objection; incomplete
20 hypothetical.

21 THE WITNESS: I mean, it depends on their
22 broadcast agreements and those depend on various
23 things, including the number of teams and who the
24 teams are.

25 So it just -- I mean, all that depends

1 on -- the broadcast agreements are what they are.
2 So it doesn't matter whether -- you know, they're
3 fixed.

4 MR. SIEGEL: Rakesh, after this line of
5 questioning, can we take a break?

6 MR. KILARU: Yeah, I was just about to.

7 MS. PARSIGIAN: I think lunch is coming at
8 noon, so if we wanted to --

9 MR. KILARU: Could we just finish this up
10 and then take lunch? Does that work?

11 MR. SIEGEL: I'm fine.

12 MR. KILARU: I'm not going to go -- I have
13 a reasonably short set of questions and then we can
14 take a break.

15 Q. Just going back to my question: You'd
16 agree with me that assuming the broadcast contracts
17 remain as they are, a conference could pay more to
18 individual student athletes if it had fewer teams;
19 correct?

20 A. I guess that's just incomplete because
21 these contracts sometimes have contingencies on how
22 many teams are in the -- in the -- you know, in the
23 league. So -- I mean, imagine, right, you have a
24 contract that pays a certain amount and it says,
25 well, if you lose two teams, then we're going to pay

1 less.

2 And so it just depends on -- on sort of
3 what's -- you know, what's the nature of that
4 contract. So, I mean, your -- your example, I
5 think, is incomplete in that sense.

6 Q. Okay. Well, you'd agree with me that a
7 conference may be able to negotiate higher rights
8 fees if it has higher-profile teams within the
9 conference; correct?

10 A. Yes.

11 Q. Okay. Your model does not account for any
12 shifts in conference membership in the but-for
13 world; correct?

14 A. I don't think that's true because I'm
15 counting up the number of athletes each year in the
16 conference and that includes the number of schools
17 that are in the conference in that given year.

18 So if a team -- if a school left a
19 conference in the but-for world, I believe I'm
20 accounting for the fact that they left and moved to
21 a different conference.

22 Q. All right. Let me ask a slightly
23 different question or a slightly different version
24 of the question.

25 Your model does not account for any -- the

1 possibility that in the but-for world, conference
2 membership would be different than it actually is in
3 the actual world -- for that in the actual world;
4 correct?

5 A. So in the but-for world, I use the same
6 actual conference membership that existed that's
7 been driven a lot by media contracts that existed in
8 the past. And so those media contracts already
9 existed in the past and I'm essentially assuming
10 that they would be the same contracts with the same
11 set of schools in the same conferences.

12 Q. Understood. You'd agree with me that --
13 I'm just covering points we've talked about -- in
14 this but-for world, the conferences are now allowed
15 to pay and recruit student athletes with a share of
16 their broadcast agreements; correct?

17 A. Some of the conferences are allowed to pay
18 the student athletes on behalf of their membership
19 who are recruiting the student athletes.

20 Q. Right. Based on the revenue from their
21 broadcast agreements; correct?

22 A. Yes.

23 Q. And as you said a minute ago, having more
24 attractive schools in your conference might give you
25 more revenue to be distributed to student athletes;

1 correct?

2 A. I mean, it -- it -- it could. It sort of
3 depends: Are some schools leaving that conference?
4 So there's fewer schools to divide the media
5 contract across?

6 You know, it sort of depends on the nature
7 of the bargain between the media companies and the
8 conferences. But in general, we have the -- you
9 know, the contracts that we have.

10 Q. Can I turn your attention to Exhibit 10 in
11 your report for a moment.

12 It's on page 92, I believe.

13 A. Yes.

14 Q. So this chart describes the broadcast
15 damages per conference per sport per year; correct?

16 A. Yes.

17 Q. So under your model, over the class
18 period, the Big 12 would have paid \$200 million to
19 student athletes over the last five years -- excuse
20 me -- between 2016 and 2021; correct?

21 A. For the six years, yes.

22 Q. Okay. Have you -- where does that
23 200 million come from, Dr. Rascher?

24 A. Well, it's the sum of the men's football
25 broadcast damages, the men's basketball broadcast

1 damages, and the women's basketball broadcast
2 damages.

3 Q. What sources of revenue is the -- are
4 institutions within the Big 12 -- what sources of
5 revenue is the Big 12 using to make those payments?

6 A. These payments are coming from the media
7 contracts that the Big 12 has and the other -- we
8 didn't really talk about this, but I sort of briefly
9 touched on it -- the other -- so it's not just the
10 conference contracts; right? But it's the college
11 football play-off and March Madness.

12 Q. Okay. Understood.

13 But under this model, though, each school
14 within the Big 12 would have paid out an
15 additional -- just to give an example --
16 \$22.8 million for men's football within 2017;
17 correct?

18 A. Yes.

19 Q. Or the Big 12 would have paid that out;
20 correct?

21 A. Yes.

22 Q. Just looking at the bottom-line numbers
23 here, you'd agree with me that the total Power Five
24 football -- men's football damages are
25 \$1.04 billion?

1 A. Yes.

2 Q. Basketball is \$280 million?

3 A. Men's basketball.

4 Q. Men's basketball, yes.

5 A. Yes.

6 Q. You anticipated my question.

7 And women's basketball is about
8 \$50 million?

9 A. Yes.

10 Q. So your but-for world involves the
11 conclusion that these conferences would have paid
12 \$1.3 billion to male student athletes over the class
13 period and \$50 million to female athletes; correct?

14 A. From these broadcast contracts, yes,
15 during the -- during the but-for world, yeah.

16 Q. Okay. Do you model any other payments
17 that would be made to these student athletes besides
18 the ones contained in this chart?

19 A. Well, that's what I mean. There's the
20 video games, and there's the individual payments and
21 so forth.

22 Q. Understood.

23 But setting those aside, your model says
24 1.3 billion to the men, and \$50 million to the
25 women?

1 A. Correct.

2 Q. And that's something that you believe the
3 conferences would vote to implement and would have
4 adopted and those are the damages; correct?

5 A. So as I say, these are a reasonable
6 estimate of the share of the broadcast revenues that
7 go to the various sports and then the royalty is
8 applied to those shares. So as a reasonable measure
9 of damages in the past.

10 Q. Right. So just to go back to my question.
11 Your model says that these are the payments that the
12 conferences would have made between 2016 and 2021;
13 correct?

14 A. Yes.

15 MR. KILARU: Actually, that's a reasonable
16 place to break if you want to -- and it sounds like
17 we can do lunch.

18 THE VIDEOGRAPHER: We're going off the
19 record. The time is 11:52 a.m.

20 (Recess taken from 11:52 a.m. to 12:35 p.m.)

21 THE VIDEOGRAPHER: Okay. We're back on
22 the record. The time is 12:35 p.m.

23 BY MR. KILARU:

24 Q. Good afternoon, Doctor.

25 A. Good afternoon.

1 Q. Where we left off, we were discussing your
2 Exhibit 12 and the calculated damages for the
3 different classes in this case.

4 Are you familiar with Title IX?

5 A. Yes.

6 Q. Do you have an opinion on what it requires
7 institutions to do in terms of payments to student
8 athletes?

9 A. Not specifically, but generally.

10 Q. Okay. What's that general opinion?

11 A. That they have to offer -- they have to
12 have sort of fair offerings to women's sports if
13 they happen to be, you know, spending more on men's
14 sports.

15 MR. SIEGEL: I'm going to object to the
16 extent it calls for a legal conclusion. I didn't
17 get it in before, but --

18 BY MR. KILARU:

19 Q. Have you tried to account for Title IX in
20 any of your damages models in this case?

21 A. No.

22 Q. Are you aware that there are state laws
23 governing -- some states have enacted laws governing
24 the use of name, image, and likeness by both
25 athletes and institutions?

1 A. Yes.

2 Q. Have you attempted to undertake any study
3 of those state laws?

4 A. I'm generally aware of -- of them. Some
5 states have them and some don't. And there's a
6 decent amount of overlap in the different states,
7 but they're not always exactly the same. Some
8 states have backed off of them since July 1 of 2021.

9 So, you know, I have a general
10 understanding of them in that sense.

11 Q. Are you aware of whether any state laws
12 prohibit institutions from making broadcast NIL
13 payments to students?

14 A. I am aware that some of the state laws
15 prohibit the -- the institutions from making
16 statements to the athletes. So that would include,
17 I presume, but, again, I'm not a lawyer, so I don't
18 know how I would interpret those laws, but...

19 Q. Have you attempted to account for those
20 laws in your model in any way? Your broadcast NIL
21 damages model?

22 A. Well, so -- I mean, these laws didn't go
23 into effect until July 1, 2021. And my damages
24 models are all in the past before these laws went
25 into effect.

1 So they're not relevant to the past. I
2 don't even think they would have gotten off the
3 ground because they wouldn't have needed to. You
4 know, the impetus was when my business partner, Andy
5 Schwartz, gave a presentation to Nancy Skinner, a
6 state senator. And then she decided to pass a
7 California law, and then the other states followed.

8 But she wouldn't have even been -- that
9 wouldn't have been even necessarily something that
10 she would have been interested in doing because if
11 the NIL payments were already in existence in the
12 but-for world, it just wouldn't have come up.

13 Q. These laws, generally speaking, took
14 effect in 2021; correct?

15 A. Yes.

16 Q. Okay. In your video game model, you
17 project what a video game would have looked like in
18 the past that did not -- that does not currently
19 exist; correct? You project the revenues, for
20 example, for a college football game and a college
21 basketball game for years in which it did not exist;
22 correct?

23 A. Yes.

24 Q. Okay. You have not attempted to account
25 for how if at all, state laws would have changed if

1 starting in 2016, institutions were permitted to
2 make broadcast NIL payments to student athletes;
3 correct?

4 A. Video game? You were just --

5 Q. Broadcast NIL payments to --

6 A. Okay.

7 Q. -- student athletes.

8 A. So I just stated my model accounts for
9 that because my assumption based on the evidence is
10 that I don't think those state laws would have been
11 in effect in 2016.

12 Q. As I think you said in the -- one of the
13 earlier sessions, you would agree that student
14 athletes even within the -- the football and
15 basketball class are making different amounts of
16 money for their third -- in third-party NIL
17 transactions; correct? From each other.

18 A. You mean like a football player in the
19 same school as a basketball player?

20 Q. Just generally speaking, football and
21 basketball players are making different amounts of
22 money in third-party NIL; correct?

23 A. In third-party NIL. Yeah, I mean,
24 different players are making different amounts, yes.

25 Q. And does that suggest to you that

1 different players have different NIL values?

2 A. Well, that's -- that's incomplete in the
3 sense that the value of someone's NIL depends on the
4 market -- the product -- right? -- that they're
5 having an NIL used in. Right?

6 And endorsing a small company, the NIL
7 value for that person might be smaller than if they
8 were endorsing a large company which potentially has
9 higher sales if they were able to sort of, you know,
10 raise the bar in terms of the notoriety of that
11 business.

12 So the NIL values depend on all the other
13 situations, not just person to person.

14 Q. Okay. You -- your model does assume for
15 broadcast NIL that all scholarship athletes have the
16 same ability to get paid in the labor market;
17 correct?

18 MR. SIEGEL: Objection; misstates
19 testimony.

20 THE WITNESS: The same ability? Is that
21 what you said?

22 BY MR. KILARU:

23 Q. Yes.

24 A. What do you mean by that?

25 Q. How do you understand the question,

1 Doctor? Every -- you assigned every student athlete
2 in the class a certain amount of damages going
3 backwards; correct?

4 A. In the -- in the past.

5 Q. Correct?

6 A. Yes.

7 Q. And so you assume, for example, that all
8 student athletes in the ACC have the same ability to
9 get paid in a given year in a given sport?

10 A. For broadcast payments?

11 Q. Yes.

12 A. I mean, I'm just -- just the way you're
13 phrasing it is weird. Let me just tell you what I
14 did and you can ask me if it's answering your
15 question or not -- or you can tell me if it's
16 answering your question.

17 The athletes on full scholarship in the
18 ACC for a given sport would be offering an NIL
19 royalty if they were to choose to play at a school
20 in that conference. And that royalty would
21 be -- you know, it's administered, but it's also --
22 that rule about that is put in place by the
23 conference, subject to the NCAA's rules.

24 So two different athletes would get the
25 same payment if they have the same sport and they're

1 full scholarship and so forth.

2 You say same ability and I just don't know
3 what you mean by "ability."

4 Q. In -- in your broadcast NIL model, the
5 starting quarterback at Ohio State would make the
6 same amount as the third-string offensive lineman at
7 Ohio State; correct? In 2018, just to give --

8 A. Assuming they have -- they're in the class
9 and so forth.

10 Q. Is it your opinion that those two
11 individuals have the same value in the third-party
12 NIL market?

13 MR. SIEGEL: Objection; calls for
14 speculation. Incomplete hypothetical.

15 THE WITNESS: So as I said, their value
16 in -- in third-party uses vary -- it varies
17 depending on how many of those uses they -- they get
18 involved with.

19 So in that sense, yes, they -- they would
20 have -- they would get different payments, I would
21 presume. And we've seen that in the actual data
22 from third parties.

23 BY MR. KILARU:

24 Q. Okay. You'd agree that in the broadcast
25 NIL model, you are only looking at revenues from

1 broadcast contracts for live telecasts; correct?

2 A. It's the -- it's from the broadcast
3 contracts that exist at the conference level. To
4 the extent that those -- those are -- you know,
5 about live broadcasts. But to the extent that
6 there's maybe a piece in there that says, we might
7 use clips and do various things, you know, to
8 promote various things, that's also built into that
9 that -- that -- that 10 percent payment.

10 Does that make sense? So you were saying
11 live broadcast, but I mean, to the extent those
12 contracts include other pieces that aren't live
13 necessarily, those are built into that 10 percent
14 royalty.

15 Q. Okay. Do you believe those payments for
16 the use of a clip is a payment in the labor
17 market -- is part of the labor market?

18 A. Well, this is the currency that the labor
19 market is using, just as if I'm a college athlete,
20 there's a certain amount -- you know, I'm allowed to
21 get paid or reimbursed for the cost of books; right?
22 But that's in the athlete labor market. It's not in
23 the book market.

24 Or the -- you know, food is being covered
25 by the university as part of the process in the

1 athlete labor market. We're not talking about the
2 food market; right?

3 So these are all just different forms of
4 currency that the labor market in college sports is
5 controlling. College sports is controlling that
6 market; right? That's the market. But the currency
7 they use are different things like tuition or
8 internship payments or we saw with Wisconsin, you
9 know, Alston payments, for instance.

10 Q. Could we turn to Exhibit 12 for a minute.
11 We were there before; just going back there.

12 A (Witness complies.)

13 Q. You got there before me.

14 As we talked about earlier, the NCAA rule
15 that you believe would remain in place in the -- one
16 of the NCAA rules that would remain in place in the
17 but-for rule is the restriction on payment not for
18 NIL; correct?

19 A. Right.

20 Q. In other words, the 10 percent amount
21 is -- as you talked about earlier -- assuming it's
22 10 percent, as your analysis does -- you used that
23 amount because that's the amount of these contracts
24 that you believe is for NIL as opposed to for
25 something else; correct?

1 A. Yes, 10 percent is a reasonable
2 conservative estimate of the use of the NIL in those
3 contracts --

4 Q. Okay.

5 A. -- and what would occur in a -- in a
6 competitive athlete labor market.

7 Q. You do not model any NCAA rule that
8 further restricts how that 10 percent of broadcast
9 NIL revenue can be distributed; correct?

10 A. Can you clarify that?

11 Q. Yes. Is there any other NCAA rule in your
12 model that restricts how conferences can distribute
13 that 10 percent of broadcast NIL to student
14 athletes?

15 A. NCAA rule?

16 Q. Yes.

17 A. No.

18 Q. Okay. So in your model from the NCAA's
19 perspective, it would be okay if the PAC-12 decided
20 to have 60 scholarships and pay each of those
21 scholarship athletes 60 scholarships in football and
22 pay each of them more; correct?

23 A. I don't -- I mean, I haven't thought of
24 that particular issue; that's why I am sort of
25 pausing to think about it.

1 Yes, I mean, my model to look into the
2 past for a reasonable estimate of damages for the
3 issues that are at question in this case that are
4 being challenged -- right? I'm trying to change the
5 minimal number of -- of in the but-for world, but
6 similar to the actual world as possible.

7 And so, no, I have not tried to do a
8 separate calculation if the NCAA had that rule. But
9 that doesn't change -- that doesn't change my
10 analysis.

11 Q. Okay. But just so I understand it, for
12 purposes of your model from the NCAA's perspective,
13 it would be permissible if a conference decided to
14 institute the rule I just mentioned for their
15 student athletes; correct?

16 A. So the challenge is -- I'm just having to
17 walk through this.

18 The challenge is to the NIL rules. And if
19 those rules are not in place, then the NCAA -- I
20 mean, I don't know what they're fine with -- that
21 doesn't violate the other NCAA rules.

22 Now, you can't offer 60 scholarships in
23 the PAC-12, as an example. There's a minimum number
24 you have to offer. And I think it's 76, but...

25 Q. Let's use 76, then.

1 A. If you can ask your question at 76, yes.

2 Q. Yeah.

3 A. So then -- and one reason they have these
4 sort of rules is to sort of maintain that -- that
5 investment that the -- that they expect the schools
6 to make in -- in the sport to be an individual one,
7 for instance, or at least to be in FBS football.

8 Q. But that minimum is below the number that
9 you used in your report of, I believe, 85 for
10 football; correct?

11 A. Right. Because of the extreme competition
12 we see in the athlete labor market, right, the
13 schools are hitting up at the maximum. They've not
14 hitting at the 76 in -- in the Power Five; right? I
15 mean, you've seen that where all the schools are
16 really trying to use all those 85 scholarships
17 because they've competing to get, you know, as many
18 good athletes as they can.

19 Q. Well, let's look at 2020 just to use one
20 example for men's football in your chart. Okay?

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

12 haven't -- we don't have this updated information
13 about.

14 The COVID response and the differences in
15 those numbers might not be as large. Just -- just
16 pointing that out as a side -- as a side note.

17 But -- so it sort of depends. In the
18 current model, if I'm using all full scholarship
19 athletes, and if there are fewer of them, then that
20 10 percent number could be spread over more of them.

21 But in a -- in a model of the -- using the
22 full roster size, it wouldn't matter how many were
23 on scholarship or not. So imagine there's a hundred
24 people on the roster. You divide that out. Whether
25 77 of them are in a class and they're getting paid,

1 it's the same dollar amount whether there's 85 of
2 them.

3 Q. How about let's just use a different year
4 to take out the COVID piece.

5 In 2017, looking at the same chart, the
6 ACC has the lowest per scholarship recipient number;
7 correct?

8 A. Yes.

9 Q. And you would agree that that puts the ACC
10 at a competitive disadvantage to the other four
11 conferences in recruiting student athletes; correct?

12 A. No.

13 Q. Okay. Why not?

14 A. Because it's the full set of offering that
15 they already have. So to the extent that the ACC in
16 football is competing now -- right? If you count up
17 the number of five star, four star, three stars,
18 right, they -- they tend to get less than the SEC
19 already.

20 And so this is a similar level of -- of
21 sort of their pecking order within the -- within the
22 athlete labor market. It's just reflective of what
23 we already have in all the other aspects of the
24 athlete labor market.

25 Q. You'd agree that in terms of the broadcast

1 NIL, the SEC -- the ACC is at a competitive
2 disadvantage to the other conferences in 2017;
3 correct?

4 MR. SIEGEL: Objection; incomplete
5 hypothetical.

6 THE WITNESS: I mean, the -- that's not
7 how it works. The labor market is the full
8 offering.

9 We talked about the school, the coach;
10 right? The, you know, scholarships, the whole
11 thing; right? So this is just one piece of that.

12 The ACC offers other things that may be --
13 that may be higher than what the other conferences
14 can offer. The cost of attendance payment might be
15 high. The tuition payment might be higher, right,
16 at a Duke, at a private school, for instance.

17 And so -- so I'm disagreeing with the way
18 you're characterizing that.

19 BY MR. KILARU:

20 Q. Okay. But, again, just looking at your
21 chart; correct? -- the ACC is able to pay less per
22 student athlete in broadcast NIL in 2017 than any
23 other conference; correct?

24 A. Yes.

25 Q. The ACC could pay more to the student

1 athletes in its conference if it were to only
2 provide payments -- broadcast NIL payments to
3 scholarship athletes and reduce the number of
4 scholarships; correct?

5 A. So in the past, though, the number -- the
6 athletes are there. They have those scholarships.
7 Like you're -- I don't know. You're sort of
8 changing the past. The past already happened.

9 Q. You're also changing the past --

10 A. Right.

11 Q. -- in the damages amount. So I'm trying
12 to understand.

13 A. I'm changing -- I'm changing the one
14 amount that they could be paid for the use of their
15 NIL.

16 **NSC**

21 A. So as I said before, if under the model I
22 propose in this class certification using evidence
23 that's common to the class, when you divide by the
24 number of -- of scholarship athletes, if there were
25 fewer of them in the denominator, then the number

1 overall grows. That's just a mathematical outcome.

2 Q. Right.

3 A. If you decide to use just the full
4 roster -- saying, okay, the full roster, any of
5 those athletes who are eligible to play might end up
6 on television -- so then we sort of spread the
7 payment across them; we have a fixed payment -- it
8 doesn't matter how many athletes are -- are on
9 scholarship.

10 So either way, you know, are both
11 feasible --

12 Q. Right. Your model does not --

13 A. -- methods of damages.

14 Q. You did not do that.

15 Sorry. Go ahead.

16 A. No, I didn't do the latter one.

17 Q. Okay.

18 A. But I'm showing there are ways that you
19 could do that.

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 A. Well, so here's -- this is what I was

1 talking about before. They might want to pay, let's
2 say, 12 percent and then it becomes a question so in
3 the future, they may say, hey, NCAA, we think that
4 this is still the use of NIL, it's not paid for
5 performance, and who knows what would happen with
6 that; right?

7 But in the past, I'm assuming that -- that
8 any -- any amount above a reasonable estimate of the
9 use of NIL -- which is 10 percent in this case --
10 any amount above that would be -- would be payment
11 for athletic performance. And so they wouldn't be
12 allowed to do that.

13 Q. Right. So going back to my question.

14 Your model concludes that leaving those
15 NCAA rules you mentioned hypothetically in place,

REDACTED - NSC

20 MR. SIEGEL: Objection; asked and
21 answered.

22 THE WITNESS: You're saying that they vote
23 like they're voting on the distribution method. And
24 the -- the dollar amounts that they're able to vote
25 across are smaller. Like, that they're able to sort

1 of allocate.

2 So it's not the fact that they're voting
3 on that that causes that. It's the fact that a
4 reasonable estimate of their usage of NIL is
5 10 percent and another school -- another conference
6 happens to have higher broadcast dollars.

7 BY MR. KILARU:

8 Q. Right. You're --

9 A. But they're not voting that the other
10 conference has higher broadcast dollars. That's
11 just happening. They're voting on -- on how they're
12 going to allocate it.

13 Q. So -- but they are voting for a system in
14 which they make equal payments to every full
15 scholarship recipient; correct?

16 A. Right. And that's not what you said. You
17 said that they vote on a payment that has them pay

REDACTED - NSC

21 So that's -- the average is still the
22 same.

23 Q. In your model -- the -- I think we talked
24 about this earlier -- 10 percent of the revenue at
25 the conference level -- 10 percent of the revenues

1 that the current conference -- the conference
2 currently gets are being distributed through the
3 mechanism that you list out in Exhibit 12; correct?

4 A. Yes.

5 Q. So that means that there's 90 percent of
6 the current revenue system -- current revenue stream
7 that's available to these conferences; correct? For
8 other purposes?

9 A. Yeah, I mean, they distribute them right
10 now to the schools, you know, generally; right?
11 They may cover their conference costs and things
12 like that.

13 But they generally distribute to make way
14 to all the existing schools. And so all that would
15 change is they would just carve out 10 percent of
16 that and distribute it to the athletes.

17 Q. To the football and basketball athletes;
18 correct?

19 A. Yes.

20 Q. Okay. You haven't attempted to model what
21 effects there would be on other athletes at these
22 institutions as a result of that 10 percent
23 reduction; correct?

24 A. No.

25 Q. Can I turn your attention to -- give me a

1 second to catch up to myself.

2 Paragraph 166 of your report.

3 A. 166?

4 Q. Yes. Give you a second to read that
5 paragraph.

6 A. (Witness reviews document.)

7 Okay.

8 Q. Okay. You say here that you have reviewed
9 Mr. Desser's report and, quote, "understand he
10 concludes that broadcasters typically require that
11 their contracting partners, including the Power Five
12 conferences and Notre Dame, have secured the
13 broadcast NIL rights to all player participants in a
14 game telecast"; correct?

15 A. Yes.

16 Q. Okay. You -- you have not done any
17 independent work to verify that particular
18 statement, have you?

19 A. I mean, I've looked at some of the
20 broadcasting contracts. And I've seen language that
21 would be consistent with that. But, again, they're
22 legal documents.

23 So I'm -- you know, I'm not interpreting
24 what they're saying. But -- but I have -- I mean,
25 this is something that I've known, you know, is

1 typically the case -- or is sometimes the case.

2 Q. Are you relying on him for that -- are you
3 relying on Mr. Desser's report for the statement I
4 read aloud?

5 A. Yes, generally.

6 Q. Okay. Do you believe you would be able to
7 offer that same opinion if Mr. Desser had not
8 submitted a report in this case?

9 MR. SIEGEL: Objection; calls for
10 speculation.

11 But you can answer.

12 THE WITNESS: Not at this stage. I would
13 have to do some more to form -- you know, to put
14 more meat on that opinion, if that's a way to say
15 it.

16 BY MR. KILARU:

17 Q. So one thing we haven't spent a lot of
18 time talking about today is what you called the
19 multisport allocation factor --

20 A. Right.

21 Q. -- is that correct?

22 Okay. And that's the split in how you --
23 in how that 10 percent of broadcast NIL money goes
24 to men's basketball, women's basketball, and
25 football student athletes; correct?

1 A. Yes.

2 Q. What are the bases for coming to that --
3 what are your bases for coming to that 75/15/5
4 split?

5 A. So one basis, piece of evidence is
6 Mr. Desser himself and his expertise in his analysis
7 that he performed.

REDACTED - NSC

11 But then also looking at the financial
12 data that we see at the conference level and school
13 level, sort of how those revenues are generated by
14 those different sports and then also some on how
15 those revenues are spent on some of the inputs.

REDACTED - NSC

18 Can we get that one. It's Tab 16. And
19 before I do, let me ask your understanding that what
20 you're including in the math is money -- is revenues
21 for live and delayed broadcast revenues; correct?

22 So when I say "live," I mean a live
23 telecast and delayed clips of that game, for
24 example, or a rebroadcast; correct?

25 A. It's really whatever is in those contracts

1 as they currently exist. So, I mean, some of
2 them -- I know they're all live. I don't know if
3 every single one of them has something about the
4 rebroadcast of it. But they tend to. Because that
5 tends to be part of the -- part of the ecosystem
6 nowadays.

7 Q. Do you believe there's anything besides
8 the rebroadcast that would be counted in the
9 revenues you were trying to distribute out?

10 A. I can't think of anything as I sit here,
11 no.

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. Okay.

21 A. I'm trying to find the page that I
22 reference it. I think that would probably help me
23 answer your question better.

24 MR. KILARU: Yeah. Let me try and find
25 that as well.

1 All right. Let me give you Exhibit 3.

2 (Exhibit 3 marked.)

3 BY MR. KILARU:

4 Q. So for a moment, let me ask you to set
5 this document aside and can you just look at
6 paragraph 175 of your report?

7 A. Okay.

8 Q. You say -- you list the three sources, you

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REDACTED - NSC

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[REDACTED]

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[REDACTED]

16 BY MR. KILARU:

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[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 Q. You can set that aside.

10 So now I'd like to talk about the
11 financial data you mentioned. I think this would
12 be -- Exhibit 8 in your report on page 89 for a
13 minute.

14 A. Okay.

15 Q. So you looked at data that's called the --

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[REDACTED]

14 Q. And then in your modeling, you assign
15 men's football 75 percent; correct?

16 A. Well, there's a -- it's 75/15/5 -- and 5.
17 So it's 80 percent of the 75, 15, and 5.

18 Does that make sense?

19 Q. Right. So the bottom-line number you used
20 is 75 percent of the revenues for men's football;
21 correct?

22 A. And that's -- if I -- if you do Exhibit 8A
23 and you put in "other," then you get close to 75.

24 MR. KILARU: Well, you read my mind. I
25 think we have that. Can we do Exhibit 5.

1 I'm sorry. It will be Exhibit 5. But you
2 know what I'm saying. That one, yes. That's this
3 one.

4 (Exhibit 5 marked.)

5 BY MR. KILARU:

6 Q. Okay. So Exhibit 5 is -- I'll represent
7 to you that it follows your methodology and what we

REDACTED - Highly Confidential – Counsel Only

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[REDACTED]

19 Q. Okay. You apply the 75 -- in your model,
20 you apply -- the 75/15/5 split applies in every one
21 of the conferences; correct?

22 A. Yes.

23 MR. KILARU: I'm going to hand you
24 Exhibit 6.

25 (Exhibit 6 marked.)

1 BY MR. KILARU:

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23 Q. Okay. What was your basis for concluding
24 that all of these conferences will come to the same
25 revenue split in the but-for world between the three

1 sports?

2 A. So as I said before, this -- this
3 information is very helpful, but it's not
4 dispositive because it's not exactly broadcast
5 revenues; right? So it's a useful input into that.

6 And then Mr. Desser and the other
7 contracts help provide more context because those
8 are directly related to broadcast revenue.

9 So, again, I think a 75/15/5 split is
10 entirely reasonable. One could still do the
11 calculations using evidence common to the class with
12 a different split in a different conference. But
13 I'm trying to estimate a reasonable measure of
14 damages in the past in a but-for world in a world
15 that's never going to happen because it's in the
16 past; right?

17 So I'm just trying to get to a reasonable
18 and reliable estimate. And so I think the 75/15/5
19 split is both reasonable and reliable.

20 Q. Okay. But you're trying to model what the
21 conferences would have paid in the but-for world;
22 correct?

23 A. Yes.

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REDACTED - Highly Confidential – Counsel Only

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. And other than the --

8 A. Like another expert, Mr. Desser, who is
9 literally a media expert who is focused on -- on
10 this sort of topic.

11 Q. And other than Mr. Desser, your only
12 source that involves the defendant conferences is

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 earlier; correct?

2 A. And the MFRS data.

3 Q. Right. Okay.

4 You'd agree with me that the policies for
5 a conference are set by a vote by the conference's
6 membership right?

7 A. Generally, yes.

8 Q. So without getting into the specifics --
9 because it may vary in the SEC, for example, all the
10 schools in the SEC would have to vote and whatever
11 came out of that process would be the conference
12 rule; correct?

13 A. Again, that's generally how big -- big
14 changes occur in these conferences.

15 MR. KILARU: Okay. I'd like to present
16 you with one last cut of the MFRS data, which
17 involves looking by school as opposed to by
18 conference.

19 So I guess this will be Exhibit 7.

20 (Exhibit 7 marked.)

21 BY MR. KILARU:

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[REDACTED]

[REDACTED]

[REDACTED]

REDACTED - Highly Confidential – Counsel Only

7 If you look at -- in your model, each of
8 the conference's members are ultimately going to
9 vote on this -- would have voted for the same
10 policy, which is to distribute their revenues, their
11 10 percent of broadcast revenue equally to men's
12 football, basketball -- let me try that again.

13 In your model, each of the five
14 conferences would have agreed to vote on the --
15 basically the exact same distribution formula;
16 correct?

17 A. I think that's a reasonable estimate, yes.

18 Q. Okay. So they would each start with
19 10 percent and they would allocate 75 percent of
20 that to football; correct?

21 A. Yes.

22 Q. And distribute that equally to the
23 football scholarship athletes; correct?

24 A. Yes. Again, this is an estimate of the
25 past for damages purposes, yes.

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13 Q. Okay. And you have not reviewed the ACC's
14 contracts to determine how those contracts -- or any
15 of ACC's financial statements to determine if the
16 conference has any different view of how revenues
17 are allocated per sport?

18 A. Not during that time period. I recall
19 earlier ACC media con- -- the documents that they
20 put out because they're non-profits. I forgot the
21 names of those documents.

22 But some of those -- for the ACC, broke
23 out some more information than most of the other
24 conferences did. But for the purposes of the
25 analysis that I did, no, I did not go back and

1 review that information.

2 Q. Okay. You can set that to the side,
3 Doctor.

4 Turning back to the split in
5 Exhibit 12 -- so let's go back to page 94.

6 A (Witness complies.)

7 Q. You've allocated 75 percent of the
8 revenues to football; correct?

9 A. Yes.

10 Q. Okay. Do you believe that a certain --
11 that a student athlete in an institution that
12 derives 90 percent of its revenues from football
13 would have an incentive to argue that their damages
14 should actually be 90 percent of the contract for a
15 given year?

16 A. I mean, I don't know what their -- I don't
17 have an opinion on their incentive to argue
18 something. Like it doesn't -- my model doesn't
19 require me to understand their incentive to argue
20 for something.

21 Q. So you haven't considered whether what the
22 incentives would be for men's football players to --
23 what share they would argue for of these -- of these
24 revenues, what their incentives would be to argue
25 for?

1 A. Again, I don't have an opinion on their
2 incentives to argue.

3 Q. Okay.

4 A. In a but-for world that's in the past that
5 doesn't actually -- that won't -- you know, that
6 doesn't exist. We're just trying to estimate.

7 Q. Right. But the class consists of all
8 men's football players who received a full
9 scholarship at least between 2016 and 2021; correct?

10 A. Yes.

11 Q. And you're assigning to every single one
12 of those class members a 75-percent split; correct?

13 A. Of the broadcast revenue, yes.

14 Q. You're assigning to every single one of
15 the men's basketball players in the class a
16 15-percent split; correct?

17 A. Yes. Again, as I said, as an entirely
18 reasonable estimate of how the -- those media
19 contracts are sort of using their NIL and generating
20 value from their NIL.

21 Q. And is it your opinion that if you took
22 all the men's football athletes together, they would
23 believe that 75 percent is the right number?

24 MR. SIEGEL: Objection; calls for
25 speculation.

1 THE WITNESS: I mean, again, I'm -- I
2 don't know what they would believe. It's just in
3 this case, they're all injured and they're all
4 better off receiving 75 percent than nothing.

5 And that's sort of the alternative --
6 right? -- is nothing. I mean, someone could build
7 this same model and use 76 percent and 14 percent
8 and that would also be a reasonable estimate using
9 evidence that's common to the class.

10 BY MR. KILARU:

11 Q. But in your view, the only models you
12 would construct would involve the fixed percentage
13 of revenues for all of the football players;
14 correct? Whether it was 75, 76, or something else.

15 A. I mean, as I sit here today in this --
16 beginnings of a class certification stage, yes, I
17 think that's an entirely reasonable model. It
18 doesn't mean that there aren't other reasonable
19 models that people might be able to put forward.

20 Q. Okay. But you haven't offered any other
21 models; correct?

22 A. No.

23 Q. And sitting here today, is it your opinion
24 that any other model would be reasonable?

25 MR. SIEGEL: Objection; vague and

1 ambiguous.

2 THE WITNESS: I don't know. I would have
3 to see what that is. But I think this is -- is a
4 very reasonable estimate of but-for damages.

5 BY MR. KILARU:

6 Q. Do you have an opinion on whether every
7 men's basketball player in the class would agree
8 that 15 percent is the right amount of the damages
9 that they should be receiving?

10 MR. SIEGEL: Objection; calls for
11 speculation.

12 THE WITNESS: I do not have an opinion on
13 that.

14 BY MR. KILARU:

15 Q. Do you have an opinion on whether every
16 women's basketball player in the class would agree
17 that 5 percent is the right amount of damages they
18 should be receiving?

19 MR. SIEGEL: Same objection.

20 THE WITNESS: I do not have an opinion on
21 that.

22 BY MR. KILARU:

23 Q. And do you have an opinion on whether
24 every other student athlete would agree that
25 5 percent is the right notional allocation for their

1 group?

2 A. I don't.

3 MR. SIEGEL: Same objection and outside
4 the scope of his testimony.

5 THE WITNESS: I don't have an opinion on
6 that.

7 BY MR. KILARU:

8 Q. And you haven't attempted to calculate
9 broadcast damages for any other sport; correct?

10 A. Outside of football and men's and women's
11 basketball?

12 Q. Yes.

13 A. Correct.

14 Q. Now, in your model, there's a 5 percent
15 that's allocated to every other sport; correct?

16 A. Yes.

17 Q. Can you think of any economic reason why
18 it's -- why you haven't modeled that 5 percent? And
19 how it will be allocated to the other sports?

20 MR. SIEGEL: Objection; vague and
21 ambiguous. Outside the scope of his opinion.

22 THE WITNESS: I don't have an opinion
23 on -- an economic reason why someone could or
24 couldn't create a model for the -- for the other
25 sports.

1 BY MR. KILARU:

REDACTED - NSC

REDACTED - NSC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

REDACTED - NSC

2 players -- there's fewer of them, they make more
3 money on average than an NFL player because there's
4 more of them. It's just the nature of the sport
5 itself.

6 Q. So you --

7 A. So when they sign group license agreements
8 in the NBA, in the NFL, there's fewer athletes that
9 think 450 is going out and marketing when they get
10 these group licensing deals.

11 And so a typical payment to an NBA player
12 from its union through these group licenses is
13 higher than -- than even what a typical payment in
14 the NFL players association would get, even a, you
15 know, future Hall-Of-Fame player in the NFL.

16 So this is entirely consistent with what
17 we see in the -- in the analogous situations.

18 Q. Right. But just to be clear, in the NFL,
19 it's the NFL players who are -- the NFL players
20 association is negotiating with the NFL; correct?

21 A. For some things, yes.

22 Q. And the -- for compensation; correct?

23 A. Yes, but not --

24 Q. In the --

25 MR. SIEGEL: Let me object. Vague and

1 ambiguous. Salary -- in terms of what you mean by
2 "salary," vague and ambiguous.

3 BY MR. KILARU:

4 Q. Let me ask you a slightly different
5 question, Doctor, which is in your model, the same
6 conference is deciding the payments for football and
7 basketball players; correct?

8 A. Yes.

9 Q. That's not the case in professional
10 sports; right?

11 A. Correct.

REDACTED - NSC



REDACTED - NSC

13 MR. KILARU: Okay.

14 How long have we been going?

15 MR. WARREN: Exactly an hour.

16 MR. KILARU: Okay. This is sort of a
17 natural stopping point so I think we'll take a
18 break.

19 THE VIDEOGRAPHER: We're going off the
20 record. The time is 1:38 p.m.

21 (Recess taken from 1:18 p.m. to 2:00 p.m.)

22 THE VIDEOGRAPHER: Okay. We're back on
23 the record. The time is 2:00 p.m.

24 BY MR. KILARU:

25 Q. All right. Doctor, I just wanted to

1 follow up on a few things regarding the broadcast
2 group and then I think we'll move on from that.

3 First, you mentioned earlier that in pro
4 sports, the NBA players make more money on average
5 than an NFL player because there's more of them.

6 You said that?

7 A. More NFL players.

8 Q. Right. So the NBA players, I'm just
9 trying to read from the real time, there's fewer of
10 them, they make more money on average than an NFL
11 player, I guess, because there is more of them --
12 more NFL players; correct?

13 A. Yes.

14 Q. Okay. You would agree with me, though,
15 that for some of the examples I used, Patrick
16 Mahomes is making more today than the 12th man on a
17 random professional basketball team in Texas; right?

18 A. Yeah, but he wasn't at Texas Tech. He was
19 making the same; right?

20 Q. Right. Your model would have him make
21 less, though, right, for just broadcast NIL?

22 A. Right.

23 Q. Just to fully understand what you did in
24 the damages calculation, you're modeling what the
25 competitive response would be of the conferences if

1 there were no NIL rules starting in 2016; correct?

2 A. The model begins in 2016, yeah, under the
3 assumption that -- that, you know, the plaintiffs
4 win their claims or -- that -- right. There
5 wouldn't have been NIL rules in 2016, yeah.

6 Q. So Exhibit 12, for example, that's the
7 result of what the conferences would have voted on
8 in the but-for -- what the rules the conferences
9 would have voted on in the but-for world --

10 A. Right.

11 Q. -- between 2016 and 2021; correct?

12 A. Yes.

13 Q. Is it your belief -- I think it may be
14 based on your conclusions here -- that all
15 scholarship players in football in a given
16 conference have the same value in the labor market?

17 A. So you keep saying "value," but that's --
18 I'm looking at what an equilibrium price would be;
19 right?

20 And so all of the scholarship players in a
21 given conference -- right? -- we see when they go
22 out into the individual NIL market, they're able
23 to -- to basically come up with different payments;
24 right? Sometimes the payments are the same. I
25 mean, you see lots of these sort of group licenses

1 that pay every tight end, you know, \$10,000 or all
2 the linemen on this team a certain amount.

3 But I'm talking about what happens in a --
4 in a -- the broadcaster video game market that's --
5 that's a group license. So the player's individual
6 value is not the outcome of an -- of the
7 equilibrium -- of the equilibrium competitive
8 market.

9 Q. So you believe that the equilibrium price
10 does not correspond to the individual value of each
11 players [sic]?

12 MR. SIEGEL: Individual -- vague and
13 ambiguous. Asked and answered. The term
14 "individual value."

15 THE WITNESS: I'm saying the price
16 corresponds to what the marketplace would pay
17 because of all of the reasons that I have listed in
18 the report and we have talked about, the uncertainty
19 of the athletes coming out of high school; the
20 analogies to NFL and NBA license agreements, which
21 again, have different players in the NFL and
22 different players in the NBA; right?

23 There's a Patrick Mahomes in the NFL and
24 there's a third string lineman and they're in a
25 group licensing deal that uses media and pays him

1 the same amount.

2 BY MR. KILARU:

3 Q. But just to go back on something you said
4 earlier, I just want to make clear I have it.

5 You said that the player's individual
6 value is not the outcome of the equilibrium
7 competitive market; correct?

8 A. I'm saying you're asking me a different
9 question than the modeling of the broadcast -- the
10 results in the athlete labor market from the
11 broadcast NIL and from the video game NIL as an
12 example.

13 Q. Is it your understanding that in
14 professional football and basketball, the -- every
15 player gets the same amount for their NIL and live
16 game broadcasts?

17 A. I mean, it's part of their collective
18 bargaining -- it's part of the AR, the all revenue
19 that they use to -- to essentially collectively
20 negotiate with the NBA.

21 Q. Well, the AR is not distributed evenly to
22 all players; correct?

23 A. Different players in the NBA get different
24 salaries, yes.

25 Q. Same in the NFL; right?

1 A. Yes.

2 Q. So is it your testimony -- I just want to
3 understand it.

4 Is it your testimony that professional
5 football and basketball, every player receives the
6 same compensation for the use of their NIL in
7 live-game broadcasts?

8 MR. SIEGEL: Objection; asked and
9 answered.

10 THE WITNESS: I don't -- I don't really
11 have an opinion right now on that. I mean, I'm
12 thinking -- I wasn't -- that wasn't the focus of
13 my -- of the scope of my analysis in this case.

14 BY MR. KILARU:

15 Q. Right. But you're -- one of the
16 yardsticks you're using here are professional
17 football and basketball group licenses; correct?

18 A. Group licenses, yes.

19 Q. Okay. And what I'm asking you about are
20 the group licenses that professional football and
21 basketball players grant for the use of their NIL
22 and live-game broadcasts.

23 You agree that has to be a part of your
24 yardstick; correct?

25 A. Well, I'm looking at the --

1 MR. SIEGEL: Objection; compound. I think
2 that was two different questions you asked.

3 THE WITNESS: The -- I'm looking at the
4 group licenses that are not part of the negotiation
5 with the NBA, which looks at a share of ticket sales
6 and sponsorship revenue. And all -- and that's not
7 a group license; that's a collective bargaining
8 outcome.

9 So I'm looking at the group licenses, you
10 know, for -- for video games and for video clips,
11 you know, special DVDs with, you know, highlights
12 and things like that.

13 BY MR. KILARU:

14 Q. So you're not looking at your yardstick at
15 the group license for live-game broadcast
16 participation; correct?

17 MR. SIEGEL: Assumes facts not in evidence
18 that there is such a group license under the
19 understanding of any of us.

20 THE WITNESS: Would you ask the question
21 again.

22 BY MR. KILARU:

23 Q. Yes. I'll actually ask a different
24 question.

25 You're not looking at your yardstick at

1 any licensing for -- at any -- you're not looking as
2 a yardstick for what -- you're not using it as a
3 yardstick what professional football and basketball
4 players get paid, if anything, for the use of their
5 NIL in live-game broadcasts?

6 A. I believe that's correct.

7 Q. And do you have an opinion as to whether
8 or not the value of every professional football
9 player's NIL is -- in a live-game broadcast is the
10 same?

11 A. I mean, I just haven't thought about that
12 for this -- like within the scope of this. So I
13 guess I don't have an opinion on that.

14 Q. Okay. Would you agree with me that you --
15 a team will not know -- a school will not know what
16 the revenues are for a given sport until -- let's
17 just talk about football and basketball for a
18 minute.

19 Would you agree that a team cannot know --
20 or a conference cannot know what the revenues are
21 for that sport until the end of the season at the
22 earliest?

23 A. All the revenues?

24 Q. Yes.

25 A. Some of them, they'll have a better sense

1 of and they'll have forecasts that are fairly
2 accurate. But, yes, they don't know how many
3 tickets they're going to sell or sponsorships
4 they're going to sell, for instance.

5 Q. You'd also agree that part of the amounts
6 that get paid for broadcast are an amount for every
7 game your conference appears in in the NCAA
8 tournament, for example; right?

9 A. So those payments are lagged typically and
10 you sort of earn points over a fairly decent
11 period -- I don't want to guess how many years --
12 but it's four years, five years, something like
13 that. And those points add up and so you know sort
14 of what points you've already earned in the past.

15 But -- so that's -- yeah, you don't know
16 how well your team's going to play when you get into
17 the tournament and how many points you earned for
18 the year. But the points are spread out over time.

19 Q. Same with football. You don't know how
20 much revenue you're going to get until you know
21 whether you're going to be in a particular bowl game
22 or the college football playoff; correct?

23 A. Generally, yes, although, again, the
24 conferences often have contracts with certain bowl
25 games and things like that so they're sort of

1 guaranteed certain amounts of revenue. It's more
2 predictable than, I think, maybe either you think or
3 than you're sort of characterizing.

4 Q. Okay. But going into the 2018 season, for
5 example, a conference would not know what the total
6 revenues are going to be for 2018 for broadcast?

7 A. For broadcast?

8 Q. Yes.

9 A. Well, for their main source of revenue for
10 a major conference, they should know essentially
11 what they're going to get from their broadcast
12 contract for the conference regular season elements.

13 Q. I'm just trying to --

14 A. But then, of course, as you said, if
15 there's football playoffs and basketball playoffs,
16 right, that could change some of those amounts.

17 But, you know, the bulk of their contracts
18 are often with their conference broadcast partners
19 and those are -- those are spelled out, you know,
20 ahead of time. They sign these contracts ahead of
21 time.

22 Q. I'm just trying to understand how this --
23 this model would work in practice.

24 So you'd agree with me that under your
25 model at the beginning of each season, at the

1 beginning of each recruiting cycle, the conferences
2 are going to have a number that they want to
3 promise -- that they want their schools to be able
4 to promise to a student athlete; correct?

5 A. Like a -- what do you mean by "a number"?
6 Give me an example.

7 Q. I mean, using your chart, Exhibit 12,
8 going into the 2018 season, the number would be
9 whatever is listed for 2018 football; correct?

10 A. Well, I think what you see -- think about
11 what happens with -- with video games; right? The
12 athletes -- say we already have this happening in
13 the pros; right? The athletes receive -- the union
14 receives those payments from the video game
15 companies usually quarterly, but after the -- after
16 the fact. The sales have already been made.

17 The athletes are making a deal on a
18 certain percentage. Sometimes there's a -- you
19 know, there's a guaranteed payment; right?

20 And so one can imagine a school saying,
21 look, this is what the payout was last year. You
22 guys get a certain percentage. You know, we expect
23 it to be similar, probably larger because most of
24 these contracts have escalations in them.

25 So I would think that -- that that's one

1 practical way that it could happen in the -- again,
2 the but-for world is the past. So it doesn't
3 matter. If the plaintiffs win this case, then
4 checks are made or whatever. You know, that doesn't
5 matter.

6 In the future-future, in the real world,
7 right? -- they could be offering that -- that
8 percentage and then the athletes would -- you know,
9 it's -- okay, I'll sign onto that. And then they
10 sort of get the payment once the amount is known.

11 Q. Okay. So the offer to a student athlete
12 would be just the percentage without a -- rather
13 than a specific amount?

14 A. That's one way you could do it. Again, in
15 the -- not -- not the past, but in the future, one
16 could imagine, you know, a dollar amount being on
17 the table in a sense and making sure that, hey, it's
18 the same as last year. So we know it doesn't
19 violate NCAA rules on pay for performance so here's
20 an amount, but there might be more.

21 You know, one can imagine different ways
22 if the athlete was sort of like, well, what's that
23 number going to look like? Well, you tell him,
24 well, here's what we got last year; right?

25 Q. All of these offers are tied to the

1 broadcast contracts for a conference; correct?

2 A. And other -- other broadcast contracts,
3 but, yes.

4 Q. Right. And are you aware of whether those
5 contracts have confidentiality provisions?

6 A. On the dollar amounts?

7 Q. Yes.

8 A. I think generally they do, yes.

9 Q. Okay. So -- and are you aware of whether
10 those contracts prohibit disclosure to anyone
11 besides the parties to the contract?

12 A. I'm -- now you're getting into the weeds
13 in the legal part. I don't know.

14 Q. Well, I'll represent to you that's the
15 case that the contracts prohibit disclosure of the
16 terms to anyone who is not a party to the contract.

17 A. Okay.

18 Q. So if that is the case, how are schools
19 going to make offers to student athletes in the
20 but-for world if they cannot disclose the terms of
21 the broadcast contracts that lead to the payments
22 that the student athlete is supposed to receive?

23 A. So just what I said. It's 10 percent
24 divided by a number of athletes; right? So it's
25 some percentage of the contract. And this is what

1 the payout was last year. Here's your offer.

2 The escalation within the contracts?

3 That's sort of everybody knows that. I don't know
4 that that's --

5 Q. Don't you --

6 A. You know, the media companies report that.
7 Even media numbers report that are they correct and
8 that's a different question. But they say, look --
9 you know, most contracts have -- they're not going
10 up and down like this typically; right?

11 Q. You'd agree that the student athlete would
12 want to know the answer to the question: 10 percent
13 of what; right?

14 MR. SIEGEL: Objection; calls for
15 speculation.

16 THE WITNESS: And as I said, they can say,
17 this is what you got last -- this is what the
18 athletes got last year. And I -- and you're asking
19 me a really specific question: Could the person
20 then say, and the contract should be larger this
21 year, or we think it's going to go up this year;
22 right?

23 So that -- that's a -- I don't know
24 legally if they can say that, if that person even
25 sitting there even knows that if they're even

1 supposed to be able to know the size of the
2 contract.

3 But, you know, the schools know how much
4 revenue they get in. And so anyone who's recruiting
5 would know how much that revenue was the year
6 before. There are likely to be forecasts of the
7 financials, I've seen them, of -- of the athletic
8 department's revenues that include the expectations
9 of those payments. And those, to my knowledge, are
10 not confidential in the same way.

11 BY MR. KILARU:

12 Q. Right. You would agree your model depends
13 on the school -- the schools in the conferences
14 being able to disclose an amount to the student
15 athlete that represents something about -- something
16 approximating what they will receive if they come to
17 the institution; correct?

18 A. Again, this is not what we see with all of
19 these contracts in the NFL and the NBA; right? The
20 athletes sign up. They get a certain percentage.
21 It says it's equally shared. And they go on.

22 Q. But --

23 A. And then -- then they get payments based
24 on those amounts.

25 Q. You would agree with me that the athlete

1 would need to know or would want to know whether
2 it's a past number or a future number what that
3 10 percent is going to consist of; correct?

4 MR. SIEGEL: Objection; calls for
5 speculation.

6 THE WITNESS: I agree with you that the
7 schools would be able to provide enough information
8 to the athletes to help the athletes make decisions.

9 BY MR. KILARU:

10 Q. That's not my question because I'm not
11 sure we agree on that.

12 Your model depends on the schools being
13 able to provide information to the student athletes
14 about what their compensation would be; correct?

15 A. And I've already answered this, that --
16 that they can say, this is what the payments were
17 last year; right? And you get the certain
18 percentage. That's the same as it was last year.
19 And we expect, you know, traditionally these numbers
20 have gone up over the years by, you know, a certain
21 percentage. I mean, they can even tell them that;
22 typically grows by 3 percent a year and this was the
23 number last year.

24 Q. And your assumption or understanding --
25 just so I have it right, is that the past year's

1 number would not be confidential. That's your
2 understanding?

3 MR. SIEGEL: Objection; calls for a legal
4 conclusion.

5 THE WITNESS: That the amount that a
6 hundred athletes received on campus for the year
7 before would be confidential based on a contract --
8 a broadcast contract signed with a conference?

9 MR. KILARU: Correct.

10 THE WITNESS: That those athletes weren't
11 allowed to talk about how much they got paid from
12 the school? That's what you're telling me?

13 BY MR. KILARU:

14 Q. I'm asking for your understanding.

15 A. I --

16 MR. SIEGEL: Calls for a legal conclusion
17 and outside the scope of his opinion.

18 THE WITNESS: Yeah, I don't agree with you
19 on that.

20 BY MR. KILARU:

21 Q. Okay. I'd like to switch gears now and
22 turn to paragraph 227 of your report. This is the
23 section that refers to the substitution effect.

24 Are you with me?

25 A. Yes.

1 Q. In paragraph 227, you say, "The premise
2 behind the so-called substitution effect is that
3 when athletes decide to stay in school because of
4 the availability of more compensation while they're
5 in school, they take up a scarce GIA slot in
6 encounter sports where the NCAA restricts the number
7 of GIAs a school may offer, a team may hit its hard
8 limit of GIAs so that someone else will be
9 displaced."

10 Do you see that?

11 A. Yes.

12 Q. And you agree with that statement, I take
13 it?

14 A. Yes.

15 Q. So your understanding of the substitution
16 effect is that it involves a situation where a
17 player remains in school rather than going to play
18 professional sports?

19 A. Generally that's -- that's the claim when
20 it was originally brought up.

21 Q. Okay. Is there any other claim you
22 address in your report?

23 A. Well, they might not go on to play
24 professional sports. They might be going on for
25 some other reason.

1 Q. But your understanding of the substitution
2 effect involves someone not playing a sport
3 anymore -- or continuing to play a sport and thus
4 taking a spot away from someone else?

5 A. Yes.

6 Q. Okay. You agree that there are some
7 examples of this occurring post July 1, 2021;
8 correct?

9 A. To my knowledge, it's a -- I think there's
10 a couple players who have said something about
11 staying in school because they can make some NIL
12 money, but I think it's very -- very de minimis.

13 Q. And -- but my question was just: You
14 agree there are some examples of this occurring
15 after July 1 of 2021; right?

16 A. Yes.

17 Q. So, for example, an example that will make
18 people in the room happy. Yesterday a player named
19 Blake Corum in Michigan decided he was going to
20 return to play college football for another year;
21 correct?

22 A. I don't know that.

23 Q. Well, I'll represent to you that that's
24 correct.

25 And I'll represent to you that he was

1 projected to have the ability to get drafted in the
2 NFL if he came back.

3 And you're aware that there are some
4 examples like that; correct?

5 A. Well, I mean, I -- I don't know about that
6 example. I don't know where he would be drafted. I
7 don't know why he decided to stay. Like I just
8 don't have the information in front of me.

9 Q. Okay. You'd agree that you haven't tried
10 to look on a sport-by-sport -- on a sort of
11 athlete-by-athlete basis within men's basketball or
12 men's football or women's basketball to try to
13 determine who those student athletes may be?

14 A. I mean, I did this sort of analysis in the
15 Alston case and there was not an issue, so to speak.
16 It doesn't really require looking at which athlete
17 would decide to stay or not. It's sort of a
18 general, there's enough slots versus are there not
19 enough.

20 So I have not looked at each athlete in
21 the NCAA to see if any of them are planning to stay
22 or have stayed in the past.

23 Q. You'd agree that when you looked at this
24 issue in Alston, the potential additional payment
25 was the payment for cost of attendance that this

1 person would receive from staying in school;
2 correct?

3 A. I mean, I don't remember the context, if
4 there was other -- I mean, because that isn't where
5 that case started, you know what I mean? It didn't
6 start as a cost-of-attendance case.

7 Q. What --

8 A. Or a \$5,980 Alston payments case. It
9 obviously didn't start at that point. So I don't
10 know -- I can't recall the context of which I was
11 doing that.

12 Q. Just looking at paragraph 227, you talk
13 about examples that you say disprove the
14 substitution effect. And the ones you give are the
15 COA stipends that were enjoined by O'Bannon, and the
16 Alston benefits that became available in 2021.

17 Would you agree with that.

18 A. That that's what I say in paragraph 227?

19 Q. Yes.

20 A. Let me just finish reading it.

21 (Witness reviews document.)

22 Yes.

23 Q. Okay. You'd agree that those payments
24 were amounts in the sort of single-digit thousands
25 per semester; correct?

1 A. Which payments?

2 Q. So the Alston payment is -- could be up to
3 \$5,980 per semester; correct?

4 A. I think it's per year.

5 Q. Okay.

6 A. But -- if I'm correct. But -- yeah,
7 it's -- it's four digits of thousands of dollars per
8 some time frame, if it's per year, per semester,
9 but...

10 Q. And that's -- your understanding is that's
11 generally true for a cost-of-attendance stipend as
12 well, it's in the four-digit thousands or maybe the
13 low five-digit thousands; correct?

14 A. So you add those together and you're now
15 at five digits; right?

16 Q. Right. Okay.

17 A. Okay. So 40-, \$50,000, you know, for an
18 athlete that wasn't available prior per -- per their
19 time there.

20 Q. If you look at their time --

21 A. And the Alston benefits include, you know,
22 the internship payments and the ability to get paid
23 more money and for -- for educational uses.

24 So there's quite a bit of other benefits
25 that the Alston case ended up allowing the schools

1 to pay the athletes if they wanted to.

2 Q. And another sort of piece of your analysis
3 here as you describe in paragraph 230 is that anyone
4 displaced would have another home within FBS
5 football or Division I basketball; correct?

6 A. That's one -- that's one aspect of it,
7 yes.

8 Q. Okay. Now, two of the classes here -- the
9 broadcast class -- two of your -- of the damages --
10 yes, two of the classes here -- the men's basketball
11 and football class and the women's basketball class,
12 those are limited to the so-called autonomy five or
13 Power Five; correct?

14 A. Yes.

15 Q. And you would agree with me that
16 100 percent of scholarships are used in at least
17 football and basketball in the Power Five; correct?

18 A. 100 percent?

19 Q. Yes.

20 A. I wouldn't say it's 100 percent.

21 Q. Okay. Have you done any analysis of the
22 utilization rate of scholarships per institution in
23 the Power Five for football and men's basketball?

24 A. Yes, I have. Historically it's quite
25 high. But it's often, you know, 12 instead of 13

1 for men's basketball or 13 instead of 15 for women's
2 basketball. Or 84, 83 sometimes instead -- instead
3 of 85.

4 So I don't agree with you that it's
5 100 percent, but I will agree with you that it's a
6 high number, yes.

7 Q. Have you done an analysis in this case of
8 that utilization rate?

9 A. I did some analysis -- so you're probably
10 aware that in the past with the squad list, it
11 was -- it was easier for us to count those up and
12 there were new laws about that, we're not allowed to
13 do that anymore.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. Okay. Have you done an analysis in this
23 case of whether the Power Five schools are using
24 100 percent of their scholarships in men's football
25 or men's basketball?

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4 Q. Okay. Where is that assessment in your
5 report of the percentage of scholarship use?

6 A. It's probably in the backup. But it's
7 there to help me calculate the number of full
8 scholarship athletes that are in the -- in the
9 various -- the various schools for the calculation
10 of damages.

11 Q. Okay. I'd ask you to point us to that
12 table at a break, but we don't have to get into that
13 now.

14 A. It's not -- it's in the backup, so it's on
15 a computer somewhere.

16 Q. That's fine. I'll ask for where it is in
17 that backup on a break, but we don't have to deal
18 with that now.

19 A. Okay.

20 Q. Have you done any analysis of whether
21 the -- setting aside NIL broadcast -- potential NIL
22 broadcast damages, the -- how the amount of
23 compensation offered by Power Five schools compared
24 to non-Power Five schools for football and
25 basketball?

1 A. So you said setting aside broadcast?

2 Q. Yeah.

3 A. So for individual athletes and for video
4 games?

5 Q. No, just for -- taking all your damages
6 assessments in this case aside, have you done an
7 assessment of whether as of July 1, 2020 -- just to
8 give an example that's prior to July 1, 2021 --
9 actually, strike that.

10 As of today, have you done an assessment
11 of how the amounts paid to student athletes by Power
12 Five institutions compare to amounts paid to student
13 athletes by non-Power Five institutions?

14 A. So in the past, I have looked at that.
15 I've looked at -- yeah, group of five
16 institutions -- right? So the football-playing
17 schools that are in the NCS that are not in the
18 Power Five -- and the scholarships -- you know,
19 basically what they provide the athletes, you know,
20 how -- you know, is it a full scholarship? Yes.

21 Does did include all the basic elements of
22 a scholarship? Yes.

23 Tuition, room and board, and books.

24 Are they paying cost-of-attendance
25 payments; yes or no. Right?

1 So -- so I've done that analysis in the
2 past for non-Power Five conferences. I haven't done
3 an updated analysis of that as of like current data,
4 like as of today, no.

5 Q. When you say "in the past," you're
6 referring to, I believe, reports that were submitted
7 in 2016, 2017 in Alston? Is that what you're
8 referring to?

9 A. Those -- that would be a time when I've
10 done that.

11 Q. Okay.

12 A. There may be other times.

13 Q. Since then -- let me ask a better
14 question.

15 A. And I'm trying to think. Since then --
16 let me just think about it for a second.

17 I can't think as I sit here if I've done
18 it since then.

19 Q. In this case, you have not submitted an
20 analysis of how the payments to student athletes in
21 the Power Five from institutions compare to the
22 payments in non-Power Five institutions; correct?
23 In this case.

24 A. Other than noting that there hasn't been a
25 major change in the other conferences. But, no, I

1 haven't done sort of a per school, per athlete
2 assessment, but I haven't seen any evidence that
3 there's been a major change in the other conferences
4 that are outside of the Power Five.

5 Q. Have you tried to do that analysis?

6 A. No.

7 Q. Looking at your Exhibit 12 --

8 A. I forgot what page that's on.

9 Q. It's on page 94.

10 A. Thanks.

11 Q. You'd agree that for -- take a random
12 other example.

13 For men's basketball for the PAC-12 in
14 2017, the broadcast damages are \$57,700?

15 A. Yes.

16 Q. If a person stayed for four years in the
17 PAC-12 who entered in 2017, they would stand to make
18 something around \$200,000 if you add up 2017 through
19 2020?

20 A. Yes. Four times 57 is around \$200,000.

21 Q. Well, I'm actually adding up your numbers,
22 57 --

23 A. Okay. I see what you're doing. Yes, I
24 agree.

25 Q. Okay. And you'd agree with me that

1 \$200,000 is more of a compensation increase than was
2 ever contemplated in the previous cases; correct?

3 MR. SIEGEL: I just object. Vague and
4 ambiguous as to "contemplated."

5 THE WITNESS: Yeah.

6 MR. KILARU: That's actually a fair point.

7 Q. I'll ask you a better question.

8 You'd agree with me that \$200,000 is more
9 of a compensation increase than if you looked at
10 Alston payments or cost-of-attendance stipends for a
11 four-year period; correct?

12 A. I would say that's generally true. Again,
13 there's an athlete who wants to go to med school and
14 the school's willing to pay for it, that's about
15 what it costs to go to med school.

16 But I'll agree with you if you were going
17 to say that that maybe isn't as common.

18

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16 A. Yes.

17 Q. Have you done any assessment of the
18 recruiting offers that student athletes received in
19 men's basketball or men's football in each of these
20 years, 2016 through 2021?

21 A. When you say "the recruiting offers," what
22 do you mean? Like --

23 Q. Offers of enrollment and offer, too, I'll
24 say it better, to attend that institution and play
25 sports there --

1 A. Okay.

2 Q. -- for scholarship.

3 A. I'm trying to see if I've done any
4 updated -- I've done those analyses in the past and
5 you can do them with evidence that's common to the
6 class. I don't know if I've done it for these
7 years. Maybe 2016. But I'll say not 2020 or 2019.

8 Q. Okay. Where is that analysis?

9 A. Some of that is -- so two places. Some of
10 that would be the -- depending on the timing of when
11 I did it in the Alston case -- because I don't
12 remember exactly what those dates are.

13 But secondly, I sometimes do an analysis
14 of the recruiting -- the correlation between
15 recruiting seasons; right? I sort of show it in
16 class sometimes. To look at the lack of competitive
17 balance in college sports and how it's been
18 increasing over time and you get correlations that
19 are up over 90 percent.

20 When you rank the schools by their
21 recruiting classes, it's the same schools each year,
22 you know, get into that. So that's an analysis of
23 the offers that these athletes are getting from 24/7
24 sports and from the other source whose name's
25 escaping me right now where you can get the

1 information for the stars and sort of see which
2 schools and which conferences -- which schools in
3 which conferences they're getting offers from.

4 Q. You haven't offered any of that analysis
5 in this case; correct?

6 A. No. It was outside of the scope of -- of
7 what I needed to do to offer a class certification
8 report. But it's certainly feasible to do with data
9 that's common to the class.

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24 A. In the past?

25 Q. Yes.

1 A. I mean -- so in the past, they made the
2 decision they made -- we're trying to measure sort
3 of what the damage was. By not paying them or not
4 allowing the schools to pay them for the use of
5 their NIL.

6 In the future, an athlete may choose a
7 different school or conference. But in the past,
8 they can't. I mean, they're choosing -- they chose
9 the school that they chose.

10 Q. Right. But you're trying to model what
11 their damages would have been in the past in a
12 different set of rules; correct?

13 A. Yes.

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19 MR. SIEGEL: Objection --

20 BY MR. KILARU:

21 Q. In 2018?

22 MR. SIEGEL: -- calls for speculation.

23 THE WITNESS: So, I mean, of course you
24 can say it's possible that a person would make a
25 different decision. But I've talked about in this

1 case and others -- and we've talked a little bit
2 about today -- that those decisions on where to
3 attend involve a lot of different elements.

4 It doesn't mean that someone with -- with
5 this sort of offer in front of them might have made
6 a different choice; right? But the damages are sort
7 of what did happen. What choices did they make.
8 What products did they buy and how much were they
9 overcharged?

10 Sort of a normal -- more typical, I should
11 say, antitrust case. It's not, oh, under a
12 different -- under a different regime, perhaps other
13 people would have tried to buy the product and it
14 wouldn't have been available to that person and so
15 oh, my gosh, they wouldn't have been able to do that
16 and so they're not going to get damages.

17 That isn't typically how I've seen
18 economics applied to the question of damages. It's
19 sort of: What did happen and is there an overcharge
20 or, in this case, an undercharge.

21 BY MR. KILARU:

22 Q. I think, indeed, we may be talking about a
23 different case, but let's set that aside.

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10 MR. SIEGEL: Objection; calls for
11 speculation. Asked and answered.

12 THE WITNESS: As I said, there are lots of
13 elements that affect the choice of what school to
14 attend and the amount that an athlete gets offered
15 is part of that decision process. And an athlete
16 very well could choose a different offer if they had
17 one. If they decided to do that.

18 BY MR. KILARU:

19 Q. All right. Well, let me ask you two
20 questions to follow up on that. First, assuming
21 everything else is equal, the facilities, the
22 location, et cetera, you'd agree with me that if a

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23 A. No, I'm saying that -- that that's --
24 because they're trying to get the best athletes that
25 they can get. And so they have to come up with an

1 offer that is competitive that doesn't exceed the
2 use of the NIL so they're not violating NCAA rules;
3 right?

4 And so they would choose that -- they
5 would choose an amount that allows them to -- to
6 compete.

7 And you're trying to equilibrate just this
8 one portion of all the big decisions that an athlete
9 makes when they choose a school. You're sort of
10 saying: Well, if the dollar amounts were the same,
11 then that's a competitive market. But the athlete
12 market is competitive because of all the other
13 elements also. All of it is combined in how they
14 make their decision.

15 Q. Okay.

16 A. So this is an amount that's a fair
17 representation of in the past, the damages to this
18 athlete for the use of their NIL.

19 Q. Do you think -- I just want to understand
20 your opinions.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 additional money did not change a single player's

1 decision-making process?

2 MR. SIEGEL: Objection; misstates
3 testimony.

4 THE WITNESS: Yeah, I'm not saying it
5 wouldn't change a single student's decision process.

6 BY MR. KILARU:

7 Q. Okay. So you agree that that additional
8 money could affect a student athlete's decisional
9 process about where to attend school?

10 A. No, I said that like 10 minutes ago.

11 Q. Okay. It seems like you were debating it,
12 but that's fine. If you said that, then we have an
13 agreement on that point.

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18 A. It depends on how many slots are
19 available. But it's possible that it could, if
20 those rosters were full.

21 Q. Yeah. If that student had to attend, as
22 you say, perhaps that's -- as in your analysis, that
23 student would attend a different Power Five school
24 or they may attend the MAC or the Sun Belt; correct?

25 MR. SIEGEL: Objection; incomplete

1 hypothetical. Calls for speculation.

2 THE WITNESS: Or the American. I mean,
3 usually you would imagine that they would sort of go
4 down the -- the -- that a student -- you know, if
5 the last student in the conference who couldn't find
6 a school to go to because one more student decided
7 to attend a school in that conference, that student
8 can go to the ACC.

9 If someone's coming to the Big 10, then
10 there's an extra slot available in the ACC. So
11 that -- that might be where they end up.

12 BY MR. KILARU:

13 Q. Ultimately, you'd agree someone would get
14 displaced out of the Power Five; correct?

15 A. If what happened?

16 Q. If the ACC student athlete goes to the
17 Big 10.

18 MR. SIEGEL: Objection; incomplete
19 hypothetical.

20 THE WITNESS: No, those are both in the
21 Power Five. So it doesn't mean someone will be
22 displaced out of the Power Five.

23 BY MR. KILARU:

24 Q. Okay. You do agree, though, that schools
25 within the big -- schools within the Power Five

1 differ in terms of the quality of facilities they
2 offer; correct?

3 A. Yes.

4 Q. They differ in terms of the amounts of
5 cost-of-attendance stipends a student athlete may
6 receive?

7 A. Yes.

8 Q. They may differ in terms of the NIL
9 opportunities a student athlete would have?

10 A. Yes.

11 Q. That may differ in terms of the playing
12 time and the exposure a student athlete could get on
13 television; correct?

14 A. Across different schools?

15 Q. Yeah.

16 A. Yes.

17 Q. And generally speaking, you'd expect that
18 a student athlete would have lower exposure at, for
19 example, in the Sun Belt than they would in the
20 Power Five; correct?

21 A. Yes. In general. Although I'm not saying
22 that a student who switched from Ohio State -- from
23 Duke to Ohio State is displacing a student into the
24 Sun Belt. I'm just not agreeing with you on that.

25 Q. Have you done any assessment in this case

1 of how many student athletes in men's basketball, in
2 men's football, and in women's basketball received
3 an offer from a Power Five institution and chose to
4 instead go to a non-Power Five school?

5 A. In this case?

6 Q. Yes.

7 A. No. I've done that in the past with data
8 that's -- that's, you know, common to the class and
9 it's pretty straightforward, yeah.

10 MR. KILARU: Could we use Tab 65, Max.

11 So I have a couple of examples I want to
12 walk through with you, Dr. Rascher. I think this is
13 Exhibit 8?

14 (Exhibit 8 marked.)

15 BY MR. KILARU:

16 Q. So what we've summarized here are the
17 offers that a basketball player named Omari Spellman
18 received. And I'll represent to you -- you may know
19 this, you may not -- that Omari Spellman played
20 college basketball in Villanova, which is in the Big
21 East Conference, which is not a Power Five
22 institution.

23 So are you with me on that?

24 A. Yes.

25 Q. And I'll represent to you that all of the

1 schools listed on here are schools that made Omari
2 Spellman an offer; right?

3 Are you with me on that?

4 A. So you're saying these are all -- he got
5 offers from these schools?

6 Q. Yes.

7 A. Okay.

8 Q. And so then what we've done here is we put
9 in -- so he was recruited going into the 2016 season
10 and what we've put in here are the proposed -- what
11 your model would say are the broadcast NIL payments
12 a student athlete would receive for 2016 in the
13 various conferences. Okay?

14 Do you see that? They're just taken right
15 from Exhibit 12.

16 A. Okay.

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REDACTED - NSC

19 A. Yes.

20 Q. Okay. And you would agree that if Omari
21 Spellman accepted any one of those offers, that
22 would displace a student from the Power Five?

23 A. So it depends; right? Again, there -- as
24 I said, there are slots open in the Power Five;
25 right? There's not 100 percent full for every

1 school. So I -- I disagree with that.

2 And you're also missing sort of that he
3 could have gotten payments from the Big East and
4 from the AAC. I'm not measuring those in this
5 lawsuit. I wasn't asked to measure those. But
6 those are out there; right?

7 Q. You haven't modeled --

8 A. So those numbers are missing sort of -- if
9 he stayed in Villanova the whole time, to my
10 knowledge, he's not even in our class; right?

11 Q. What was that?

12 A. If he stayed in Villanova the whole time
13 in college --

14 Q. Right.

15 A. -- because I don't know, he's not in our
16 class; right?

17 Q. Yes.

18 A. Unless he is in the additional sports
19 class because he got a deal and he stayed an extra
20 year, so after July 1 of 2021, because he got six
21 years of eligibility -- and I mean, I don't know his
22 full story so you're sort of giving me a guy that I
23 don't know much about.

24 But I'm telling you in the past, he could
25 have gotten paid through a Big East or an AAC

1 contract also; I'm just not measuring those.

2 Q. Okay. But you haven't done any type of
3 calculation for arguable broadcast damages for
4 conferences other than the Power Five conferences;
5 correct?

6 A. Correct.

7 Q. Do you have an opinion on what your
8 methodology would be if you were asked to calculate
9 those damages?

10 MR. SIEGEL: Objection; outside the scope
11 of his opinion.

12 THE WITNESS: I don't.

13 BY MR. KILARU:

14 Q. Okay. And if -- just going back a minute.

15 You would agree with me that it's possible
16 that Omari Spellman instead choosing to attend the
17 University of Kentucky could displace someone in the
18 class currently from the Power Five; correct?

19 A. It is possible.

20 Q. Okay. And that displaced student would
21 not have access to the University of Kentucky's
22 basketball facilities; correct? If we're using
23 Kentucky as an example?

24 A. Correct.

25 Q. They would not have access to University

1 of Kentucky's coaching; correct?

2 A. Correct.

3 Q. They might receive a different financial
4 package from their institution in terms of cost of
5 attendance and scholarship aid; correct?

6 A. I mean, every -- every athlete chooses a
7 different -- I mean, gets a different package if you
8 define it as a different dollar amount.

9 But typically these athletes are going to
10 be getting a full -- like their tuition is covered.
11 So that's sort of equal across the schools.

12 You know what I mean? It's a different
13 dollar amount, but they're all getting full tuition.
14 Maybe they're all getting full COA and the dollar
15 amount might be different from that.

16 So I'm just trying to characterize what
17 you're saying as a different package. It's sort of
18 the same package often; right? It's just the way
19 that the dollars are measured for tuition is sort of
20 immaterial to the athlete in some sense; right?

21 It's money goes from this side of the
22 school or that side of the school. Athletic
23 department sends money over to the registrar's
24 office for tuition. The athlete -- it's sort of
25 immaterial to the athlete.

1 So what I'm saying is the packages are
2 more similar than I think you're characterizing
3 them.

4 Q. The amount of money that displaced student
5 athlete might receive from a different school could
6 be lower than the amount of cost of attendance that
7 they're getting from Kentucky; correct?

8 A. Yes.

9 Q. They might receive fewer other benefits
10 from their new school as opposed to Kentucky's, some
11 of these Alston-like benefits you were referring to;
12 correct?

13 A. That's possible.

14 Q. And they may have a reduced ability to
15 monetize their NIL at a different school than
16 Kentucky; correct?

17 A. That's all possible, yes.

18 MR. KILARU: Okay. Let give you a
19 different example. We can set that one to the side.

20 This is Exhibit 9.

21 (Exhibit 9 marked.)

22 BY MR. KILARU:

23 Q. So I've handed you a very similar chart.
24 This is a chart for a student athlete named Maxwell
25 Lorca-Lloyd, who played men's basketball starting in

1 2019 at the University of Pennsylvania in the Ivy
2 League.

3 Are you with me on that?

4 A. I see that.

5 Q. Okay. So, again, I'll represent to you
6 these are the offers that he received. He received
7 an offer from two Big 10 schools, one SEC school,
8 one Big 12 school, and one PAC-12 school.

9 Do you see that?

10 A. I see that.

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23 Q. Okay. And I take it you haven't done any
24 analysis of what the -- of whether there would be a
25 broadcast NIL payment for the University of

1 Pennsylvania and the Ivy League?

2 A. I have not done that analysis.

3 Q. Okay.

4 A. And is it -- did this player stay at Penn
5 the whole time?

6 Q. Yes.

7 A. Are they still there presumably, as far as
8 you know?

9 Q. Yes, as far as I know.

10 A. Okay. So they're not in the class; right?

11 Q. That's right. But if this student athlete
12 decided to go to one of those schools, they could
13 potentially displace a student athlete in the
14 Big 10; correct?

15 A. Again, it depends on which school and
16 whether there was an open slot at -- at that school.
17 But potentially, yes, if there aren't open slots,
18 then they could -- they would have potentially
19 displaced someone. Again, this didn't happen in the
20 past.

21 Q. Okay. And I can run through them again,
22 but the same set of questions: The displaced
23 student athlete, they will lose access to
24 facilities, potentially different cost-of-attendance
25 stipend, that set of questions, you would agree that

1 would apply just as well to this new displaced
2 student; correct?

3 A. I mean, of course. Now, if they end up
4 somewhere else, right, then they get the value of
5 all those facilities and training and education and
6 so forth.

7 It's not -- again, it's not like -- you're
8 characterizing like they get all this stuff and then
9 it's gone. But they get something else.

10 Q. You would agree that if that displaced
11 student athlete went, for example, to the Ivy
12 League, they would not receive any athletic space
13 financially?

14 A. But likely receive financial aid.

15 Q. Correct.

16 A. The Ivy League schools sometimes
17 out-recruit -- Stanford, I've been told many times
18 by my former students who work there -- because the
19 Ivy League offer -- it can offer more than Stanford
20 could offer because of the athletic scholarship
21 limitations that don't exist for need-based and
22 merit-based limitations in the Ivy Leagues.

23 Q. Right. But just going back to my
24 question, the student athlete would not be eligible
25 to receive athletic space financial aid?

1 A. And I'm answering that saying: That's
2 fine. You can call it that. But it's other
3 financial aid that has -- it's still dollar amounts.
4 It's still tuition coverages; right?

5 So you call it "athletic financial aid," I
6 call it merit- or needs-based aid. It's still doing
7 the same work.

8 Q. And you would agree that this displaced
9 student athlete may have less of an ability to
10 monetize their NIL if they are at a different
11 institution besides the Ohio State University and
12 the Big 10; correct?

13 MR. SIEGEL: Objection; calls for
14 speculation. Incomplete hypothetical.

15 THE WITNESS: Less than -- I mean, it
16 depends where they end up.

17 BY MR. KILARU:

18 Q. You have to assess where they ended up;
19 right?

20 A. To see if they -- if they can monetize
21 their NIL at a different school in a different
22 amount?

23 Q. In the same way, yes.

24 A. I don't see any reason to assess that, but
25 if -- if that were the question on the table, then

1 you'd have to figure out, you know, what is the
2 value being at that other school.

3 MR. KILARU: Just one more.

4 Could you -- number 66, actually. Thanks.

5 (Exhibit 10 marked.)

6 BY MR. KILARU:

7 Q. So the last one of these we'll do is
8 similar analysis for a student athlete named Troy
9 Warner, who played men's football starting in 2016
10 at BYU.

11 Do you see that?

12 A. I see that.

13 Q. Okay. Based on this chart, again, these
14 are just the offers received, Mr. Warner received
15 seven offers to go to schools in the PAC-12.

16 Do you see that?

17 A. I see that.

18 Q. And one offer to receive -- one offer to
19 play in the ACC.

20 Do you see that as well?

21 A. Yes.

22 Q. Okay. And if Mr. Warner had accepted any
23 of those offers, he could theoretically -- he could
24 possibly have displaced a student athlete in the
25 PAC-12; correct?

1 A. I have a clarification question on these.

2 Q. Yes.

3 A. Do you know that -- were all of these
4 offers for full scholarships, full COA? Like you --
5 you know that yourself?

6 Q. Yes. I mean, they're football offers.

7 Are you aware of student athletes getting
8 below full cost-of-attendance football offers?

9 A. Yeah, walk-ons.

10 Q. Do you believe walk-on offers are
11 represented on 24/7, for example?

12 A. Yes.

13 Q. Okay. Well, I'll represent to you that
14 these are not walk-on offers, but these are full
15 scholarship offers.

16 A. Okay.

17 MR. SIEGEL: Well, I'm just going to
18 object to all of these as lack foundation and
19 assumes facts that are not in evidence.

20 But he can answer them based on your
21 representations.

22 THE WITNESS: I'm treating them as
23 hypotheticals.

24 MR. KILARU: Sure.

25 THE WITNESS: Okay.

1 BY MR. KILARU:

2 Q. So in this hypothetical, if Mr. Warner had
3 attended the University of California Berkeley, he
4 could have displaced a student athlete in the class
5 who attended the University of Berkeley and played
6 football there; correct?

7 A. That's -- I have the same answer: That it
8 depends on how many scholarships were being used at
9 those schools at the time; right? Because we saw
10 the incident to allow more scholarships during
11 COVID. They sort of realized that that -- the
12 artificialness of the 85, and the 13 and 15 caps and
13 they let more scholarships in, just as an example of
14 the flexibility of the scholarship caps.

15 Q. You'd agree if schools offered more
16 scholarships, that would reduce the NIL --

17 (Reporter asks for repetition.)

18 If schools offered more scholarships, that
19 would reduce the broadcast NIL payment to each
20 student athlete; correct?

21 A. Other than the fact that they didn't in
22 the past. But if in the future, they -- they were
23 to offer more scholarships then and they would do a
24 similar calculation; right? Those per-athlete
25 amounts would be -- would be slightly smaller.

1 Q. Okay. Any of your answers to the
2 questions about facilities, ability to monetize NIL,
3 and so on different for this student athlete as
4 opposed to the previous examples we discussed?

5 A. No. You know, I think my one answer for
6 all of these folks is that I don't know -- we don't
7 know the circumstances that led them to choose
8 these -- these schools. What we do know is they
9 chose them; right? We have some facts about what
10 happened in the past.

11 Q. And you'd agree you don't have any
12 estimate of how many student athletes there are who
13 received Power Five offers between 2016 and 2021,
14 full scholarship offers in football, men's
15 basketball, and women's basketball, and turned them
16 down to go somewhere else.

17 You don't have that number?

18 A. So my analysis of that exact question in
19 Alston and O'Bannon, so I must have looked at seven,
20 eight years, nine years, maybe, of data where that
21 it is not very common to turn down a Power Five
22 offer in favor of a non-Power Five offer.

23 Mostly the athletes who get Power Five
24 offers accept those offers. And the athletes who
25 are choosing schools outside of the Power Five are

1 typically not getting a Power Five offer.

2 Q. Okay. So just going back to my question.
3 You have not -- you don't have any estimate of how
4 many student athletes there are who received
5 Power Five offers between 2016 and 2021 that turned
6 them down to go somewhere else that you're offering
7 in this case; is that right?

8 A. So I haven't seen any evidence that that
9 has changed that much, that being what I just talked
10 about; right? I didn't do a particular analysis in
11 this case, but based on my experience having done
12 this sort of work, of course, using evidence that's
13 common to the class, that one can do in a
14 straightforward manner.

15 I haven't seen any evidence that that has
16 changed, that all of a sudden you have a bunch of
17 athletes choosing Group of 5 schools, Ivy League
18 schools that weren't doing it in the past.

19 Q. And just to circle back on one other thing
20 we discussed earlier. I just want to make sure I
21 have a clear answer for this.

22 Do you have an opinion on whether
23 disclosing payments to student athletes based on --
24 for broadcast NIL based on past years of a broadcast
25 contract would breach the confidentiality provisions

1 in those contracts?

2 Do you have an opinion on that?

3 MR. SIEGEL: Objection; calls for a legal
4 conclusion.

5 THE WITNESS: I don't know what it --
6 what -- I don't know how, you know, to interpret the
7 contract in a way that would say someone's breaching
8 a confidentiality agreement or not.

9 MR. KILARU: Okay. I think that's another
10 natural stopping point for a break.

11 THE WITNESS: Okay.

12 THE VIDEOGRAPHER: We're off the record.
13 The time is 3:02 p.m.

14 (Recess taken from 3:02 p.m. to 3:20 p.m.)

15 THE VIDEOGRAPHER: Okay. We're back on
16 the record. The time is 3:20 p.m.

17 BY MR. KILARU:

18 Q. Dr. Rascher, just -- I think one more
19 question on the substitution effect piece and then
20 we'll move on to a different topic.

21 Based on your answers I think you agree
22 with this, but I want to make sure. You haven't
23 tried to model how, if at all, behavior of student
24 athletes would have changed between 2016 and 2021
25 based on the additional broadcast NIL payments that

1 you include in the report; is that right?

2 MR. SIEGEL: Objection; misstates report.

3 THE WITNESS: Model their behavior? Um --

4 BY MR. KILARU:

5 Q. How -- let me ask the question just so you
6 have it. How, if at all, the behavior of student
7 athletes would have changed.

8 A. So there's -- in the marketplace there are
9 sort of pecking orders for football and basketball.
10 And my analysis -- and that tends to be correlated
11 with the revenues in those -- in those conferences.
12 And we see that even with -- when the payments
13 for -- you know, for coaching; right? Coaching
14 staffs get paid a certain amount, and those are even
15 correlated with the revenues. And so in that
16 sense -- so I'm -- I'm not modeling individual
17 athlete behavioral decisions that may have changed
18 but sort of in general that competitive nature and
19 the way that competition plays out I've assumed, but
20 based on evidence, that -- that that wouldn't change
21 substantially in -- in -- wouldn't have changed,
22 rather substantially in the but-for world.

23 Q. I just want to make sure I fully
24 understand that.

25 You do agree, based on what you just said,

1 you haven't modeled how if at all any individual
2 athletes's decisions would have changed in the
3 damages period; correct?

4 A. Correct.

5 Q. You have modeled how conference
6 competition would have occurred in the damages
7 period; is that what you were getting at with the
8 kind of point about aggregates?

9 MR. SIEGEL: Objection; misstates
10 testimony. And I think he answered this question,
11 but...

12 THE WITNESS: Yes, conference competition,
13 but -- but sort of the -- the -- the way that
14 athletes allocate themselves -- right? -- as a
15 group. So you may have one athlete, like you said,
16 who might switch from Duke to Ohio State, but then
17 another athlete is sort of filling that Duke spot
18 that's of a similar quality and so forth.

19 BY MR. KILARU:

20 Q. I'd like to turn now to the third-party
21 NIL damages. As we discussed a few -- well,
22 probably a few hours ago at this point, you applied
23 what you called the before- and after-methodology to
24 determine damages for this class?

25 A. Yes.

1 Q. Or for this -- this type of damages, I
2 should say?

3 A. Yes.

4 Q. And these damages apply to all members of
5 the additional sports -- well, who is eligible for
6 damages -- for -- under your analysis, who is
7 eligible for third-party NIL damages?

8 A. Any athlete in the men's basketball and
9 football class, the women's basketball class, and
10 the additional sports class who received payments
11 post-July 1, 2021 subject to the definitions of, you
12 know, full scholarships and all those sorts of
13 things.

14 Q. Okay. Looking at your report, paragraph
15 179, if we could. I think we'll get to the same
16 point. Page 94.

17 A. Yes.

18 Q. You say your methodology applies to any
19 athlete in any class who receives compensation for
20 the use of their NIL after July 1, 2021, excluding
21 damages relating to video games or broadcasts;
22 correct?

23 A. Yes.

24 Q. So is it fair to say if a member of the
25 proposed classes received some kind of third-party

1 payment for NIL after July 1, 2021 that's in your
2 data, you would model damages for them in the past;
3 correct?

4 A. Yes.

5 Q. Okay. And would you take that number from
6 post-2021 and apply it to each of their year's
7 eligibility in the past?

8 A. Yes.

9 Q. So -- I mean, I'm not using a specific
10 example but just theoretically. If a student
11 athlete in November of 2021 in their fourth year of
12 eligibility earned \$500 for third-party NIL, you
13 would give them an additional \$1,500 of backwards
14 damages? So just the \$500 three years going back;
15 is that right?

16 MR. SIEGEL: Objection; misstates report,
17 but I'm sure he'll explain.

18 THE WITNESS: That's sort of the beginning
19 stages of it. That's sort of the general
20 framework -- right? -- that the athlete shows their
21 unique characteristics in value. It's all captured
22 in the fact that they did get paid when it became
23 allowed and it got paid a certain amount. And then
24 going back, making adjustments for, you know, when
25 they -- when they started playing in college --

1 right? -- you know, potential other adjustments like
2 conference changing or role on team, things like
3 that. But that's the base -- sort of a starting
4 point is what you said.

5 BY MR. KILARU:

6 Q. Yeah, fair -- we'll talk about the
7 adjustments. But sort of other than the
8 adjustments, is that a fair statement of the general
9 methodology?

10 A. Generally, yes.

11 Q. Okay. The before-period would be from the
12 beginning of the 2016 to '17 school year and it
13 would end on July 1, 2021; is that right?

14 A. Yes.

15 Q. Maybe not for a specific athlete but for
16 the class as a whole; is that right?

17 A. Yeah, yes.

18 Q. And then the after-period would start from
19 July 1, 2021 and run to the date any class is
20 certified in this case; correct?

21 A. Yes.

22 Q. Okay. Now I'll represent to you that the
23 class certification hearing is scheduled for
24 July 2023. So is it fair to say that you would have
25 roughly two years' worth of data in the after-period

1 if a decision follows shortly after that?

2 A. It sort of depends on the nature of
3 discovery and all that stuff, subpoenas and
4 everything. But theoretically -- again, giving time
5 constraints -- that's two years after the payments
6 were first allowed. So that's two years, yes.

7 Q. The relevant transactions would occur
8 between July 1 of 2021 -- for the after-period --
9 July 1, 2021 and whatever date of certification;
10 correct?

11 A. Yes, I believe so. And then to the
12 extent -- I mean, if the case continues from there,
13 then I think typically you sort of measure damages
14 up to trial. I mean, I believe so. At least I've
15 done that in the past in other cases. Like, it
16 doesn't stop at the class certification hearing
17 necessarily.

18 Q. Okay. All right. Assuming that the model
19 is for -- is based on data from July 1, 2021 to,
20 say, August 1 of 2023, that will be about two
21 years of transactions; is that fair to say?

22 A. Yes.

23 Q. Okay. And if the court's evaluating the
24 model on July 20 of 2023, there would be again
25 around two years' worth of transactions in the model

1 that's being presented to the court; is that
2 correct?

3 A. Well, as I said, it depends on -- I mean,
4 the subpoena discovery time frame has lagged for
5 whatever reasons. I mean, I think in every case it
6 sort of happens. So it all depends on whatever data
7 is available to me at the time I'm preparing the
8 analysis if in fact I end up doing that that then is
9 presented at a class hearing or -- I don't know if
10 there's a report I write or -- whatever the process
11 is, I don't know.

12 But you understand what I'm saying? Like,
13 it all depends on sort of the timing of when I have
14 access to the data and how long it takes me to wrap
15 my arms around it.

16 Q. Do you have any other examples of cases
17 where the after-period has been around two years'
18 worth of data?

19 A. I mean, I had a -- I've had a couple of
20 breach-of-contract cases where things sort of got
21 fixed up and then time moved forward and then the
22 lawsuit sort of kicked in and so you had sort of an
23 after-period that was multiple years. I can think
24 of one that pops into my head right now and another
25 one that I'm pretty sure that that's what happened.

1 Q. Okay.

2 A. But -- so, yeah.

3 Q. Did those, to the extent you can say,
4 involve more than two years or less than two years
5 of data?

6 A. Um --

7 Q. If you can't say because of a protective
8 order I'm not asking you --

9 A. I don't think so.

10 Q. -- I just want you to -- I don't want you
11 to get into any trouble.

12 A. No, I understand.

13 I feel like one of them had three years
14 and one was around two years; you know, portions,
15 not just exact round numbers, but two- to three-year
16 range.

17 Q. You'd agree that the marketplaces -- you'd
18 agree that the total amount of NIL earnings
19 available to student athletes might vary from year
20 to year based on economic conditions affecting the
21 potential purchasers of NIL rights; is that fair to
22 say?

23 A. It might depend on what of the...?

24 Q. Do you believe that the market for NIL
25 rights is the same in terms of size every single

1 year? For third-party NIL transactions, it's the
2 same every single year?

3 A. No. Oh, and I thought of -- so there's
4 some non-sports cases, antitrust class -- class
5 actions that have -- sort of the collusion period
6 ended and the cases take a while and so you have
7 sort of a clean period before and after. It was
8 like a -- I think the contact lens case was like
9 that, if I remember.

10 Anyway. Sorry. That was the previous
11 question.

12 Q. No, that's fine.

13 A. The -- the mark- -- the dollar amounts
14 going to college athletes for individual name,
15 image, and likeness from year to year are not going
16 to be exactly the same amount; that would be just
17 sort of luck if that were the case.

18 Q. And that might represent that in certain
19 years advertisers have either more or less of an
20 appetite for getting endorsements from student
21 athletes; is that fair to say?

22 A. Generally yes. I mean, in this case it's
23 slightly different because we're sort of starting
24 from scratch. June 30, no one's allowed to be paid.
25 And so the next day of course you're not going to be

1 at equilibrium; it's going to take years to sort of
2 get to that equilibrium. And so my presumption in
3 the past is that we would already be at that
4 equilibrium.

5 Now, again, being at an equilibrium does
6 not imply that from year to year the total dollar
7 amounts in the market are exactly the same, no.

8 Q. Did you attempt to collect data or did you
9 attempt to obtain data for third-party NIL
10 transactions involving professional athletes over
11 the last, say, three, four, five years?

12 A. No, not in the scope of this case, no.

13 Q. So in the scope of this case you didn't
14 attempt to, for example, determine if there is some
15 kind of year-over-year difference between the amount
16 of money that's being spent on third-party NIL
17 advertisements?

18 A. So in general I have looked at pro athlete
19 endorsement earnings over time to see sort of what
20 those markets look like. But I don't think I
21 included any of that in this report. But it's
22 something -- it's sort of my general knowledge of
23 the -- of -- of that market.

24 Q. But you haven't done any kind of
25 regression of those numbers in this case to

1 determine the relationship between a year and NIL
2 endorsements; is that right?

3 A. No, I have not.

4 Q. If a student athlete signed an NIL deal
5 on, say, July 2, 2021, would you think that that
6 would suggest they had a high probability of
7 securing that deal before July 1, 2021?

8 A. Yes.

9 Q. Okay. If they signed their first NIL deal
10 on July 30, 2022, do you think that would in any way
11 affect their likelihood of getting -- reflect on
12 their likelihood of getting a deal before July 1 of
13 2021?

14 A. It sorts of depends. You know, were they
15 in college in the earlier year? Were they in a
16 different conference, for instance?

17 You know, as you mention, the marketplace
18 takes time to reach an equilibrium. And so a deal
19 in that second year still might be an indication of
20 their value; it sort of depends on just other common
21 information around that.

22 Q. Can you turn to paragraph 218 of your
23 report. It's on page 115.

24 A. Yes.

25 Q. And here you're talking about something

1 called a Q Score. Do you see that?

2 A. Yes.

3 Q. Would you agree that a Q Score is sort of
4 a popularity rating for a person based on their
5 recognition and personal characteristics?

6 A. That's a -- that's an okay way to describe
7 it, sure.

8 Q. Okay. You say that you believe a
9 Q Score -- you do not include any adjustments for
10 Q Score in your model; correct? Or you haven't
11 proposed to do any adjustments for that in your
12 model; correct?

13 A. Correct.

14 Q. Okay. Let's talk about someone we've
15 mentioned earlier today. Stetson Bennett IV. Your
16 understanding is that he was a walk-on when he
17 arrived at Georgia; is that correct?

18 A. I don't know that for sure. But...

19 Q. Do you know that he's sort of -- wasn't
20 that prominent and now is obviously a very famous
21 college athlete?

22 A. Yes.

23 Q. Okay. Is it your view that his Q Score
24 was the same when he started his collegiate career
25 as it is today?

1 MR. SIEGEL: Objection; calls for
2 speculation.

3 THE WITNESS: I mean, I don't know that he
4 has a Q Score, in terms of a source of information.
5 Like, a -- you know, Q Scores are sort of a term
6 from the Q Score company that they use. So I don't
7 know if they tracked him or not.

8 BY MR. KILARU:

9 Q. Well, as you said a few minutes ago, you'
10 agree that it's a measure of a person's popularity;
11 correct? You're -- it's trying to measure a
12 person's popularity; correct?

13 A. It's trying to; correct.

14 Q. And how popular a student athlete is would
15 have an effect on how likely they are to obtain
16 endorsements; correct?

17 A. It certainly could be a factor. And in
18 this case I think that's why this actual experiment
19 is so rare. Sort of like you said; you know,
20 it's -- how often do you have cases that move into
21 the future? You've got an after-period; right? We
22 have -- we're lucky in this case in the sense, from
23 an economics perspective, that we happen to have an
24 actual natural experiment.

25 And so the individual payments for someone

1 like a Stetson Bennett that they receive begin to --
2 to off- -- to sort of come up with that Q Score of
3 those unique characteristics for that athlete. My
4 analysis of Q Scores in other cases are that they
5 typically haven't changed that much over time unless
6 some major event occurs.

7 Q. Okay. Well, do you believe that Stetson
8 Bennett has the same level of popularity today that
9 he did when he started playing college football?

10 A. I mean, I -- he just won a national
11 championship, so that's sort of unique.

12 Q. So is that a no, you don't believe he has
13 the same level of popularity today than he did when
14 he started playing college football?

15 A. I mean, I just haven't looked at him in
16 particular so I don't really have an opinion on that
17 because you're sort of representing to me -- I
18 didn't know that he started as a walk-on, as an
19 example.

20 Q. Okay.

21 A. I didn't remember that. So...

22 Q. Let me give you a different example. Have
23 you heard of a student athlete named Doug Edert?

24 A. No.

25 Q. Okay. So I'll represent to you that he

1 was a player on the Saint Peter's College basketball
2 team that had a pretty deep run in the NCAA
3 tournament that year. Are you familiar with at
4 least the Saint Peter's experience?

5 A. Yes.

6 Q. Would you agree that the players at Saint
7 Peter's have a greater popularity today than they
8 did four years ago?

9 A. I mean, again, I just haven't looked at
10 that particular example. So it's -- you know, I
11 just don't know. I mean, I imagine certainly
12 locally in their marketplace but not necessarily in
13 a broader marketplace.

14 Q. Well, if Doug Edert has obtained NIL deals
15 post-NCAA tournament, his information would be part
16 of your damages analysis; correct?

17 A. Yes.

18 Q. You'd be calculating damages for him over
19 either the last two, three, or four years depending
20 on when he started playing; correct?

21 A. Yes.

22 Q. And so you don't have an opinion, though,
23 as to whether his popularity is the same after last
24 year's NCAA tournament as opposed to before?

25 A. I mean, if before he didn't play as

1 often -- right? -- then I have an assessment of sort
2 of the role on the team that might show that, oh, he
3 didn't play as much when he was a freshman or a
4 sophomore and so there's an adjustment to be made
5 for that. And that's likely to be correlated with
6 his popularity assuming that he was a -- one of the
7 reasons why Saint Peter's went far in the
8 tournament.

9 Q. There's two separates points there I want
10 to follow up on. First, is it your view that a
11 player's playing time is necessarily correlated with
12 popularity?

13 A. Not necessarily but it's likely to be
14 correlated with popularity. It's sort of hard to
15 become popular if they're not -- if a person's not
16 playing.

17 Q. But assuming he played the same amount
18 before the NCAA tournament as after -- for example,
19 assume he played the same amount in the regular
20 season games preceding the NCAA tournament in that
21 given season versus after -- your model has no way
22 to account for that difference in popularity;
23 correct?

24 A. Within the same season?

25 Q. Yes.

1 A. I think it would treat him in a similar
2 fashion of -- you know, because I'm doing it sort of
3 year to year. I'm not doing it month to month;
4 right? My analysis is year to year.

5 So, like, if he were paid after the
6 tournament and that's part of the same year, then
7 that's just sort of a single assessment of what his
8 value was that year or what he's -- you know, what
9 he earned that year. So it sort of combines the --
10 whatever happened in the regular season and whatever
11 happened in the postseason.

12 Q. Right. Would you agree that particular
13 moments in sporting events may have -- may affect an
14 individual student athlete's popularity?

15 A. Yes.

16 Q. For example, a gymnast might have a
17 perfect-10 routine and then become much more popular
18 than she was before she had that perfect 10;
19 correct?

20 A. Yes.

21 Q. And those moments can occur within a
22 season; right? Someone may start every game in
23 college basketball and then hit a shot to win the
24 NCAA tournament and they'll be much more popular
25 after that shot as they were the rest of the year;

1 correct?

2 A. Yes. And those are necessarily rare, in
3 the sense that -- practically by definition -- for
4 something to sort of capture people's attention.
5 Not everything can capture people's attention all at
6 the same time.

7 So the incidences of -- of a particular
8 situation where -- where, you know, a gymnast gets a
9 perfect 10 and people even hear it and notice it and
10 perhaps watch a video of it are not very common
11 practically by definition because other things are
12 happening too in people's lives; right? So there's
13 only so many things that can sort of rise up to
14 become popular.

15 Q. But you'd agree you have no way to predict
16 when those moments will occur; right?

17 A. From a sports perspective, no, right.

18 Q. And your model does not account for the
19 differences that may occur for a student athlete
20 before and after those events as long as they occur
21 within a single season; correct?

22 A. Right. So I'm -- if it occurs within a
23 single season, then my model's sort of treating that
24 as the whole season, like whatever -- whatever the
25 payment was for that season. So it treats it sort

1 of as a single -- you know, a unit of entry for me
2 is a single season for -- for a particular athlete.

3 Q. One more example. If a student athlete
4 after the national championship game gets a paid
5 trip to Disneyland, after July 1, 2021 your model
6 would essentially give that same number for the last
7 two or three years depending on how long they
8 played; correct? Subject to adjustments for year.

9 A. Well, role on the team, conference, any
10 changes for COVID, things like that. So there are
11 adjustments for those sorts of things. But if
12 there's an athlete who received a payment -- and why
13 did they receive it? Because they won a national
14 championship?

15 Q. That's one example why.

16 A. Yeah, the model doesn't -- other than the
17 idea that the athlete was already, you know, playing
18 a lot, playing on a major team, I mean, that's
19 what's really -- that's what this is capturing, is
20 those payments capture so much about the athlete,
21 the school that they choose to go to -- right? --
22 compared -- you know, a major Power Five school
23 compared to a group of five. And the sport they're
24 playing -- right? -- that drives a lot of the
25 payments that these athletes are receiving.

1 So there's a whole lot that's built into
2 using what the natural experiment of watching what
3 the athletes got paid.

4 And so, you know, winning a national
5 championship and getting a free trip to Disneyland
6 is, you know, potentially correlated with playing on
7 a major program, playing on a popular sport that
8 gets a lot of media coverage; getting playing time
9 that they may not have gotten when they were a
10 freshman, for instance.

11 So -- and I do think that a lot of that
12 information is captured by the unique
13 characteristics of the situation we're in, which is
14 an athlete being on a particular team at a
15 particular school and then getting this payment;
16 right? They've proven that they've got value in the
17 NIL market. So I just think a lot of that is
18 captured -- capturing what you're talking about.

19 Q. Just so I'm clear, though, the only
20 adjustments you propose to make in your report
21 are -- I'm going to list them one at a time so -- I
22 know you'll say there's others, if I just give you
23 one, but I'm going to give you what I think are the
24 fullest.

25 COVID in 2020 is one of them; correct?

1 A. Correct.

2 Q. Changes in school; correct?

3 A. And COVID can be for two years, but --

4 Q. Right.

5 A. -- that's fine.

6 Q. For COVID, generally speaking, is one
7 adjustment?

8 A. Yes.

9 Q. Otherwise you don't have year-over-year
10 adjustments, do you?

11 A. Don't have what?

12 Q. Otherwise you have no other year-over-year
13 adjustments; correct?

14 A. I talk about if needed, although I don't
15 see good evidence for it, it's sort of an
16 inflationary adjustment, but it wouldn't be very
17 big.

18 Q. So COVID is one. Changes in school is
19 another; correct?

20 A. Yes.

21 Q. Participation level in sport is another;
22 correct?

23 A. Yes.

24 Q. And changes in role on squad are one as
25 well; correct?

1 A. Yes.

2 Q. And those are the only adjustments;
3 correct?

4 A. Yes, based on the analysis that I've done
5 looking at the sort factors that would drive
6 potentially big changes in these numbers, those
7 capture the -- the bulk of that. Because as I said
8 before, what they actually get paid is really --
9 captures a whole lot of unique characteristics of
10 that person.

11 Q. Can I turn your attention to paragraph 237
12 of your report.

13 A. Okay.

14 Q. In this paragraph you're talking about
15 adjustment at the sport level for NIL compensation
16 by conference; correct?

17 A. Yes.

18 Q. And you say you'll test whether they are
19 statistically significant differences across
20 conferences within a given sport; right?

21 A. Yes.

22 Q. Okay. You've not done that adjustment
23 yet; correct?

24 A. No. I mean, I -- it's -- it's as I'm
25 getting more data, the adjustment becomes more

1 feasible to do; right? You can do it with the data
2 I have, but the more data you have, you get a better
3 analysis; right? Because you get a more -- more
4 statistical certainty.

5 Q. So you say that if there is a
6 statistically significant difference in demand for
7 the use of a transferred athlete's NIL, you'll make
8 an adjustment in the damages calculation; right?

9 A. Yes.

10 Q. Okay. How will you make that adjustment?

11 A. So, again, part of that will be to see
12 what it looks like. But generally I will make an
13 adjustment that is sort of the typical percent
14 change in that -- for that sport and for that
15 conference; right? Sort of like okay, here -- and
16 particularly for a school. And I mention that. But
17 imagine it just at the conference level; right?
18 You're going from a Sun Belt, as you mentioned
19 earlier, to an SEC school. And sort of does that,
20 you know, change their marketability in some way
21 playing the same sport; right? And so there would
22 be sort of an adjustment for that. Sort of like you
23 would do an inflation adjustment; right? It's an
24 average adjustment across a bunch of people or a
25 bunch of industries. And this will be sort of an

1 adjustment from -- from conference to conference.

2 Q. Is that --

3 A. It's just statistical analysis.

4 Q. Yeah, will that assessment involve some
5 kind of regression of those -- of variables being --
6 so it would be conference and the year? Or what
7 would the variables be?

8 A. So the variables would be sort of the
9 payments that we see in the marketplace and then
10 some control for which conference and sport they're
11 playing. Potentially a control for position,
12 especially for quarterback. That's sort of the one
13 that often stands out, as you guys probably have
14 seen in the data; right?

15 But, anyway. It may just be a
16 statistical -- sort of a correlation analysis, like
17 a t-test, two-sided t-test. It could definitely
18 be -- you could do it with a regression, although
19 that becomes redundant if you're doing a
20 single-variable t-test.

21 So, you know, you can do it in a number of
22 different ways, but it's all sort of using the same
23 set of data in common economic ways.

24 Q. Do you know today what your methodology
25 will be for doing that, what tool you will use?

1 A. I think I mention in here; to do a --
2 basically a test of differences by quartile, as an
3 example.

4 Q. Right. You give that as an example, but
5 is that what you intend to do, or will you use a
6 different methodology?

7 A. Well, no, that's the methodology I intend
8 to do at this stage. But as we move forward --
9 right? -- presumably we get more information; right?

10 Your experts may come up with something that's
11 interesting and it's like, okay, that's an
12 interesting idea, let me look at that; right?
13 That's sort of the point of as we march towards
14 justice; right? And so then I might take that and
15 adjust it. But as I sit here today I have a
16 reliable and reasonable model and method to measure
17 damages for the individual NIL plaintiffs.

18 Q. You talk about making an adjustment for
19 role --

20 A. Yes.

21 Q. -- in your report --

22 A. Yes.

23 Q. -- in Section 7.3.4.1?

24 A. Yes.

25 Q. You'd agree you don't describe the

1 specific methodology you're going to use to make
2 that analysis; correct?

3 A. I talk about using quartiles, doing the
4 sort of similar thing as I would for conference.
5 And looking to see if there's a major difference in
6 role. I mean, what's been really interesting and
7 not surprising to me -- and maybe not surprising to
8 you guys -- but in the data that we've seen is that
9 freshman and underclassmen are getting paid quite a
10 bit for their use of their name, image, and
11 likeness, even if their role is not right away
12 expected to be that prominent.

13 And so there may not be an anal- -- you
14 know, when you compare sort of upper and lower
15 quartile or something like that in interquartile
16 range, you might not get much of a difference. And
17 so if you don't, then there's really no reason to do
18 an adjustment. But if you do, then you can make
19 that adjustment using sort of the average change.
20 For -- for a role, you know, you can do it by sport,
21 you can do it by conference if you needed to. But
22 essentially just sort of looking at the average
23 change.

24 Q. Have you decided what data you're going to
25 use?

1 A. Yeah, I talk about it in here. There's
2 data -- there's -- pro football, there's sort of
3 snaps played, you know, like basically how often is
4 someone playing; and then there's also -- for
5 basketball there's minutes played; right? Those are
6 good assessments of sort of the role of the player
7 on the team; right? Those have been used in tons of
8 other studies.

9 Q. Right. But have you personally looked at
10 that data and concluded that you can make a valid
11 adjustment based on that data?

12 A. Yes.

13 Q. Okay. But you haven't performed that
14 analysis yet?

15 A. No.

16 Q. Any reason why not?

17 A. As I said, I'm waiting to get more
18 information to make it more robust, like more --
19 subpoenas; you know, more discovery information;
20 right? A lot of our information is just from the
21 early parts of this -- of the NIL period, of the
22 after-period.

23 Q. You have a set of third-party NIL
24 information; correctly -- correct; right?

25 A. Yes.

1 Q. Okay. And the data about snaps on Pro
2 Football Focus or the stats you mention on Sports
3 Reference and Her Hoop, those are already out
4 there -- correct? -- for the years in which you're
5 assessing damages?

6 A. Yes.

7 Q. Okay. So why haven't you tried to do that
8 analysis and demonstrate it to this date?

9 A. Well, I was describing the process of
10 doing that. It's really sort of straightforward.
11 But as I said, I'm waiting to get more information
12 so that I can do a more robust version of that.
13 Instead of like doing it once and getting more
14 information and doing it again. Sort of an
15 efficiency reason for it.

16 Q. When do you intend to do that second
17 analysis?

18 A. Likely over -- well, sort of I'll check in
19 to see where we're at on discovery and subpoenas but
20 likely over the next few months.

21 Q. And are you planning to just add that as
22 an addendum to your existing report, or what's your
23 plan for actually giving us the results of this
24 methodology?

25 A. I don't know. I think there's a reply

1 report on the calendar somewhere.

2 Q. Okay. So you could perform this analysis
3 based on the data you have to date; is that fair to
4 say?

5 A. So the problem is you sort of need a
6 sufficient number of data points to make it -- to
7 make it as usable as you'd like it to be, as I'd
8 like it to be. And so I'm sort of waiting for more
9 data points.

10 Q. Is your opinion that a model -- if you use
11 the methodology you have today described in this
12 report as applied to the data you have today, it
13 would not be a usable model?

14 A. No, you can use it. It just wouldn't be
15 as good a model as it would be if you had more data.

16 Q. Do you believe that if you used the data
17 you have today and the methodology you list in this
18 report, you'd have an economically reliable model?

19 MR. SIEGEL: I'll object; vague and
20 ambiguous in terms of the reliability. Asking about
21 it currently? Asking a period before? Or --

22 MR. KILARU: Yeah, I mean, you can object
23 to vague and ambiguous but I'll get there.

24 MR. SIEGEL: Yeah, I'm just --

25 MR. KILARU: But he can answer the

1 question. So...

2 MR. SIEGEL: To the extent you understand
3 it.

4 THE WITNESS: So are you saying -- will
5 you just ask it again?

6 BY MR. KILARU:

7 Q. Sure. Do you believe that if you used the
8 data you have today and the methodology you list in
9 this report for third-party NIL, you would have an
10 economically reliable model?

11 A. Yes. It's an economically reliable method
12 that you -- yes.

13 Q. Okay. So why have you not included that
14 analysis in this report when you have included the
15 results of, for example, your modeling for broadcast
16 NIL damages?

17 A. Well, because that includes all of the
18 class members. I mean, there's really -- I'm not
19 waiting around for more information on broadcast or
20 on video games; right? I mean, there may be more
21 information that comes and there may be some
22 relevant information, but I can do, you know, the
23 bulk of showing it -- again, at the class cert stage
24 if there's a method that's reliable and reasonable,
25 I can do that quite straightforward with the

1 broadcast data and the video game data. With the
2 individual NIL data, I'm waiting -- I know that
3 there's more data coming and so I'm sort of waiting
4 to get a more robust set of information to provide a
5 more economically reliable model to the court.

6 Q. Have you actually performed the model
7 independent of whether you've disclosed it in this
8 report? Have you tried to build it and run it?

9 A. Yes. We have looked at different
10 conference effects. I don't recall if we've done
11 the -- the role on the team. I feel like they
12 started to do a sample version of that.

13 Q. Okay. Again, I'm -- if you've started to
14 do it already, I'm curious as to why it doesn't
15 appear in your report.

16 A. Well, I mean, at the time I did the report
17 I only had data through whatever -- you know,
18 August or whatever it was. I mean, it wasn't --
19 there wasn't -- it wasn't that robust of a set of
20 data. And then we continue to get more data in.

21 Q. So when you submitted the report, had you
22 run your third-party NIL model with the adjustments
23 on the data that was available?

24 A. No.

25 Q. Okay. So your opinion is that the model

1 was reliable without having run it?

2 A. Well, because it's standard economics --
3 it's very standard economics.

4 Q. Understood. But just to be clear, your
5 opinion is that the model you lay out in this report
6 was reliable as applied to the data you had without
7 your having actually run it; correct?

8 A. I'm saying it's a reliable methodology
9 to -- it's a reliable methodology. You're literally
10 measuring whether or not something is statistically
11 significant. If it is you, apply it. If it's not,
12 then there's no application. There's no -- there's
13 nothing more to it than that.

14 Q. Okay. But you didn't include any of that
15 analysis in the report that you submitted in this
16 case thus far; correct?

17 MR. SIEGEL: Objection; misstates
18 testimony. Misstates the report.

19 THE WITNESS: I don't -- yeah, I didn't
20 include any of those -- any of those sorts of
21 adjustments in here, no.

22 BY MR. KILARU:

23 Q. Okay. So you say -- if you look at
24 paragraph 122 of your -- sorry -- excuse me -- page
25 122 of your report, paragraph H -- you say that

1 there's damages of at least \$21.2 million for other
2 lost NIL opportunity damages for the football and
3 men's basketball class; right?

4 A. I see that.

5 Q. You say there's damages of at least
6 \$1.1 million for other lost opportunity damages for
7 the women's basketball class?

8 A. Yes.

9 Q. And you say that there's \$11.3 million in
10 damages for the additional sports class; correct?
11 Or, sorry, I should take that back. \$10.7 million
12 for lost opportunity damages for the additional
13 sports class; correct?

14 A. I see that, yes.

15 Q. And that's based on -- that does not
16 involve you using any of the adjustments you measure
17 in the model?

18 A. Um --

19 Q. You describe in your report, I should say.
20 Not actually the model.

21 A. Correct. Yeah, this is sort of that first
22 step.

23 The reason that it's "at least as" is
24 because I know how much more -- like, I know that
25 there are a lot of other NIL payments that I just

1 haven't received yet. And so I know based on the
2 size of that that this is a lower bound of what
3 those numbers will eventually tell us. Because not
4 everybody can go from a small conference to a big
5 conference; right? Some of the athletes -- some of
6 the athletes, you know, might go from a big
7 conference to a small conference. So sort of
8 understanding the economics of how this NIL market
9 is playing out.

10 Q. The numbers that we just discussed that
11 you put in this report are based solely on taking
12 post-July 1 transactions that you have and taking
13 them back for however many years the student athlete
14 had eligibility; correct?

15 A. I think these are just for the one -- I'd
16 have to look. I think these are just for the one
17 year. So this isn't even including all the previous
18 years. That's why it's "at least."

19 Q. Right. So -- well, I'll ask a slightly
20 different question.

21 The numbers that we just discussed are
22 based on your taking the data you had as of the date
23 of your report on transactions and supporting that
24 back for how many years the individual student
25 athlete had eligibility?

1 A. I don't know. I think this is just -- I
2 would have to look at my report.

3 Q. Please do.

4 A. (Witness reviews document.)

5 So -- no, this is just reporting a single
6 year's worth of damages assuming no adjustments, but
7 not all the previous years prior to that, and then
8 not including all of the other data that's going to
9 come in presumably through discovery and subpoenas.

10 Q. So you took the data you had for the 2021
11 year and just assumed that those transactions would
12 have existed in the 2020 year; correct?

13 A. I adjusted for the eligibility of the
14 athletes. Because some of the data we have coming
15 in, they're freshman. So they weren't eligible in
16 prior years. So I have to account for that. And
17 then I'm not assuming this is just for 2020. I'm
18 just saying this is one number.

19 So Exhibit 14 sort of shows -- I think it
20 adds up to the same number that you get. Yeah.
21 That -- that we get in paragraph 234. So I'm just
22 reporting essentially in paragraph 234 what's
23 reported in Exhibit 14.

24 Q. Got it.

25 A. So but it's only -- it would only be one

1 year's worth of damages and it wouldn't even include
2 all of the other potential folks that are out there
3 that -- whose data we're going to receive or we
4 already have received since the cutoff date in this
5 report, back in the late summer.

6 Q. Right. So it's one year of
7 transactions --

8 A. Yes.

9 Q. -- is the estimate that you have in here;
10 correct?

11 A. I believe so, yes.

12 Q. With none of the adjustments --

13 A. Yes.

14 Q. -- other than the one you just mentioned.
15 Okay.

16 You don't have a calculation of damages
17 for any of the named class members in this case as
18 to -- well, I'll strike that.

19 You don't have an estimation of damages
20 for Grant House; correct?

21 A. I mean, I didn't take the model and apply
22 it to him in particular as a named plaintiff, no.

23 Q. You don't have a calculation of damages
24 for Sedona Prince --

25 A. No.

1 Q. -- for third-party NIL; correct?

2 A. I just have a method on how that would be
3 applied, yes.

4 Q. And for the two of them, their only
5 damages would be for third-party NIL; correct?

6 MR. SIEGEL: Objection; misstates report.

7 THE WITNESS: She -- Sedona Prince might
8 get broadcast damages.

9 BY MR. KILARU:

10 Q. Let me do that separately. Fair point.

11 For House the only damage would be
12 third-party NIL; correct?

13 A. Yes, I believe so.

14 Q. Okay. And for Prince you've calculated
15 the broadcast NIL damages but not the third-party
16 NIL damages; correct?

17 A. I mean, I've shown the method to do that,
18 but, yes.

19 Q. Okay. You'd agree that the information
20 that you used were NIL transactions that were
21 reported to institutions; correct?

22 A. Yes.

23 Q. Okay. Do you know whether those deals
24 were actually consummated and paid out?

25 A. No.

1 Q. Could we do Tab 26, what I think is
2 Tab 26.

3 Never mind. Never mind. I take that
4 back.

5 So if a student athlete reported a
6 transaction to their university and then became --
7 and then had that transaction revoked, that would
8 currently show up in your model; correct?

9 A. The university might have removed it also.
10 I don't know.

11 Q. You don't know one way or another?

12 A. I mean, we're receiving information that I
13 believe the universities are relying upon themselves
14 to make their decisions and to comply with
15 whatever -- whoever they're complying with, whether
16 it's the school, the NCAA, the conference, or if
17 it's a state law or something like that.

18 Q. So let me just give you a sort of specific
19 hypothetical example. If a student athlete signed
20 an endorsement deal for, say, \$5,000 for NIL and
21 reported that to the university -- that's step 1 --
22 after July 1, 2021 -- right? So are you with me on
23 that?

24 A. Yes.

25 Q. Okay. And then they lost that deal

1 because of some off-the-field conduct, they didn't
2 report that to the university -- are you still with
3 me?

4 A. Yes.

5 Q. -- your model would still say include that
6 \$5,000 in the damages calculation; correct?

7 MR. SIEGEL: Objection; incomplete
8 hypothetical.

9 THE WITNESS: Yeah, I just don't know -- I
10 don't know what the university would do with that
11 information. Presumably they would know that the
12 person had some off-field conduct that caused an
13 issue. I mean, they might know that. They might
14 check in with that student and say, hey, are you
15 still doing this deal or not. Or if the deal
16 was even -- if it was publicly known that they
17 didn't get the deal, the university might make an
18 adjustment. But I don't know if that happened in a
19 particular case or if that happened in your
20 hypothetical.

21 BY MR. KILARU:

22 Q. You don't know if the university would
23 take out the deal from their reporting in that
24 circumstance; correct?

25 MR. SIEGEL: Objection; calls for -- go

1 ahead. You can answer.

2 THE WITNESS: Yeah, I don't know what the
3 university would do in that case.

4 BY MR. KILARU:

5 Q. If it did not take that deal out, it would
6 be reported as damages in your model currently;
7 correct?

8 MR. SIEGEL: Objection; incomplete
9 hypothetical. Calls for speculation.

10 THE WITNESS: Again, it depends on the
11 situation. Is the person a freshman or not; you
12 know, are they even in the model; are they in the
13 class. All those different things. But -- but,
14 yeah, the methodology would calculate what those
15 damages are.

16 MR. KILARU: Okay.

17 THE WITNESS: I don't know if in some
18 future class determination people would have to
19 prove or disprove anything. I've -- you know, I've
20 seen cases like that where you have to sort of prove
21 you were harmed and you sort of show up with proof
22 or resubmit proof. I mean, you -- I see those
23 securities cases all the time; right? Submit your
24 proof that you bought the stock and you sold the
25 stock and what your losses were.

1 MR. KILARU: Just a couple more things and
2 then I think we'll take a break.

3 Q. You -- could you turn to pages -- page 53
4 of your report. So in paragraph 115, you talk about
5 a deal that Fanatics plans to offer in which student
6 athletes in Division I can opt in to a program and
7 receive compensation for physical and digital
8 trading cards. Do you see that?

9 A. Yes.

10 Q. For the next paragraph you talk about a
11 potential deal where Adidas is offering compensation
12 to -- potentially offering compensation to student
13 athletes at its partner schools?

14 A. Yes, I see that.

15 Q. Another example then about Fumble offering
16 a deal to a group of female college athletes?

17 A. I see that.

18 Q. You don't have any evidence to date of the
19 take rates for offers like this; do you?

20 A. To the extent that any of this information
21 is in the data we have, then we would have that
22 captured in the data. But I haven't looked
23 specifically at these three examples, for instance.

24 Q. Are you aware of entities called
25 collectives that are bundling money from donors and

1 providing them to student athletes? Are you aware
2 of this?

3 A. I'm aware of collectives. I wouldn't
4 characterize it exactly the way you said, but, yes.

5 Q. How would you characterize them?

6 A. Well, they're -- they're gathering
7 finances or infor- -- money from various sources.
8 You call them donors. But, I mean, whether they
9 donate to the school prior to that or not, I don't
10 know the answer to that.

11 Q. I just meant to the collective. I --

12 A. Okay, donors to the collective. Yes.

13 Q. Do you have an opinion as to whether the
14 payments they are making to student athletes are for
15 NIL?

16 MR. SIEGEL: Objection; overbroad.

17 THE WITNESS: In general my presumption is
18 that the NCAA is enforcing its rules. And I haven't
19 heard of any of those collectives' payments being
20 reversed. So I presume that those payments are for
21 the use of the athletes' NIL.

22 BY MR. KILARU:

23 Q. Other than that presumption, have you done
24 any -- do you have an opinion as to whether they're
25 for NIL or not?

1 MR. SIEGEL: Objection; calls for a legal
2 conclusion.

3 THE WITNESS: I mean, I'm just looking at
4 the marketplace and I'm noticing payments taking
5 place. And I'm not -- I haven't heard of any
6 enforcement that has happened with the NCAA.

7 I mean, I'm aware that the NCAA has -- is
8 aware of the collectives and may potentially look
9 into some of them, but I haven't seen any evidence
10 that these collectives are being challenged or have
11 had to reverse any payments. So that's my
12 presumption as I looked at the marketplace.

13 BY MR. KILARU:

14 Q. I think this is my last question on this
15 topic and then -- or last set of questions on this
16 topic and then we can take a break.

17 But you'd agree that you're applying the
18 before- and after-method from the period from -- we
19 talked about starting in 2016 and then going to
20 whatever date it is in the future; correct?

21 A. Yes.

22 Q. Okay. You'd agree that that model
23 benefits student athletes who optimize their
24 earnings in the after-period; correct?

25 A. Well, I mean, it depends; their role on

1 the team and the conference affiliation. Those
2 things may change.

3 Q. Just to go back --

4 A. Um --

5 Q. Oh, please go ahead.

6 A. So the school they chose, the sport they
7 play; right? So, I mean, I don't -- I don't agree
8 with the way that you're basically characterizing
9 it.

10 Q. Well, let me give you sort of a specific
11 example. We talked earlier about the Saint Peter's
12 example where after the rules change, student
13 athletes at Saint Peter's made a run in the
14 tournament and may or may not have been able to
15 monetize their NIL as a result of that; right?
16 That's an example we talked about?

17 A. Yes.

18 Q. You're aware that in 2019 in the
19 before-period Loyola Chicago, a similarly not
20 high-profile school, made its Cinderella run in the
21 NCAA tournament; correct? Are you aware of that?

22 A. Yes. With Sister Jean, yes.

23 Q. Correct. And the earnings for those
24 student athletes would be measured based -- the
25 damages for any of those student athletes would only

1 involve deals that they've struck since 2021;
2 correct?

3 A. As opposed to -- what do you mean? Deals
4 they struck before 2021?

5 Q. I'm just asking the damages would be for
6 deals they were able to strike after July 1 of 2021;
7 right?

8 A. Yes.

9 MR. KILARU: Okay. I think this is a good
10 place to take the break. I'm hoping the next
11 session will be the last one.

12 THE VIDEOGRAPHER: We're going off the
13 record. The time is 6:15 p.m. Sorry. 4:16 p.m.

14 (Recess taken from 4:15 p.m. to 4:32 p.m.)

15 THE VIDEOGRAPHER: Okay. We're back on
16 the record. The time is 4:32 p.m.

17 BY MR. KILARU:

18 Q. Doctor, I'd like to talk to you about
19 video games now, which is the last set of damages
20 that I believe you've modeled.

21 A. Okay.

22 Q. You calculate damages for the men's
23 football group based on, is it -- am I right -- is
24 it fair to say using the Madden game as a yardstick
25 for college football?

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20 A. Yeah, that's the -- I would say that's the
21 bulk of what I'm using those games for, as
22 comparables or as yardsticks.

23 Q. Okay. Starting with football, you'd agree
24 that the Madden game has fewer teams and fewer
25 players than any college football game; correct?

1 A. You mean, any college football video game?

2 Q. Yes.

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7 Q. But when you're talking about a video
8 game, you're talking about a game that includes more
9 athletes than the Madden game; correct?

10 A. Yes.

11 Q. Okay. You'd agree that the Madden game
12 for several years -- because there was no college
13 football game, the Madden game was one of the
14 primary games a consumer could play if they wanted
15 to sort of simulate playing football on a video
16 game; is that fair to say?

17 A. I mean, the Madden game is for NFL, not
18 college football. There's other games out there for
19 sure. The Madden game's I think the most popular
20 historically.

21 Q. You think it's the most comparable to
22 college football game. Presumably why you used it
23 as a yardstick; right?

24 A. Well, I sort of show it as comparable and
25 then I use it as a yardstick, yes.

1 Q. You agree that its growth after the EA
2 football game was discontinued came at a time when
3 just by basic fact there was no college football
4 game out there at the same time; right?

5 A. I mean, right. The fact is there wasn't a
6 college football game. Um -- right.

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[REDACTED]

22 A. Correct.

23 Q. Okay. Turning to basketball. And
24 basketball, too, you'd agree that there are fewer
25 teams and fewer players in the basketball games;

1 correct?

2 A. In the pro basketball games?

3 Q. In the pro basketball game, yes, than any
4 college game you've modeled.

5 A. Yes.

6 Q. Okay. You would agree -- are you aware
7 that Take-Two discontinued its college basketball
8 game in 2008?

9 A. Yes.

10 Q. And EA discontinued its college basketball
11 game in 2010; right?

12 A. Yes, that sounds right.

13 Q. Okay. And I'll represent to you that the
14 O'Bannon lawsuit was filed in July of 2009. I'll
15 just represent to you.

16 A. I think I remember that, yes.

17 Q. Okay. Do you have any analysis -- have
18 you done any analysis of why Take-Two discontinued
19 its NBA game in 2008?

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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3 Q. Right. But my question was about

4 Take-Two.

5 A. Well, you also asked about EA.

6 Q. Right. But the last question I asked -- I

7 mean, just so we're on the same page, the last

8 question I asked was do you have any analysis of why

9 Take-Two discontinued its NCAA game in 2008?

10 A. I don't recall as I sit here the specifics

11 of that, no.

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17 Q. And EA had actually discontinued its NBA

18 game, NBA Live, since 2019; right?

19 A. Which is one of the reasons why I used

20 Take-Two, as sort of the -- they sort of seemed to

21 have won out in the NBA space and EA seems to have

22 won out in the NFL space. It doesn't mean that they

23 aren't viable. You know, we see lots of other

24 versions of video games too. But the ones that are

25 sort of the comprehensive if it's in the game it's

1 in the game sort of style -- right? -- where you're
2 trying to mimic the actual game, there seems to be
3 sort of the Take-Two for the NBA and the -- the EA
4 for -- for the NFL.

5 Q. Yeah, but you'd agree that EA discontinued
6 its NBA game, NBA Live, in 2019; right?

7 A. I don't have -- I don't know the date. So
8 you're giving me a year and I'm --

9 Q. I'll represent to you that it was -- NBA
10 Live 2019 was the last version.

11 A. Was the last version; right.

12 Q. Have you done any analysis of whether
13 basketball games are a riskier investment or less
14 popular for companies like EA than football games?

15 A. I mean, there is analysis -- some of the
16 information that I looked at points to -- well, you

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22 or done a particular risk analysis to see the
23 likelihood of success for a particular game.

24 Q. You do model damages for a college
25 basketball game; correct?

1 A. Yes.

2 Q. Okay. And the last college basketball
3 game that existed was the EA game in 2010. I'll
4 just represent that to you. Okay.

5 Any reason to doubt that?

6 A. I'm trying to recall if there were mobile
7 games. But from what I'm -- the type of damages
8 that I'm looking at are not typically mobile games,
9 although those are now popular.

10 So I don't know for sure that there hasn't
11 been some sort of college game. But as I sit here
12 I'm not modeling -- as I sit here I'm relying on
13 information that was used for the EA and the
14 Take-Two college games.

15 Q. Which were both discontinued well before
16 the college football game; right?

17 A. Yes.

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A horizontal bar chart showing the percentage of respondents who believe the U.S. should take action to address climate change, broken down by age group. The x-axis represents the percentage, ranging from 0 to 100. The y-axis lists the age groups. The bars are gray.

| Age Group | Percentage |
|-----------|------------|
| 18-29 | 100% |
| 30-49 | 92% |
| 50-69 | 100% |
| 70+ | 100% |
| 18-29 | 68% |
| 30-49 | 98% |
| 50-69 | 25% |

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10 MR. KILARU: Okay. Could we get Tab 38.

11 I'm going to hand you a document that I
12 believe you relied on that's produced in the case.

13 I'm going to give you a second to read it.

14 MR. SIEGEL: What exhibit number is this?

15 MR. FULLER: 11.

16 THE REPORTER: Yeah.

17 (Exhibit 11 marked.)

18 THE WITNESS: So I -- the redacted, I --

19 MR. KILARU: Yeah, I'm not going to ask
20 you about any of that.

21 THE WITNESS: Okay.

22 BY MR. KILARU:

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13 Q. Okay. You'd agree that as a -- in the
14 economic literature, opt-in systems typically
15 feature less participation than opt-out systems; is
16 that fair to say?

17 MR. SIEGEL: Objection; overbroad.

18 THE WITNESS: I mean, that's -- certainly
19 can be the case. There is literature that says that
20 there's probably -- there possibly could be
21 counter-literature. I haven't looked at that
22 particular question in this case so I really don't
23 have an opinion on it.

24 BY MR. KILARU:

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9 Q. And your model assumes that every player
10 on a roster starting in 2016 would actually -- every
11 player who has a scholarship or third-party NIL
12 would actually take and participate in the game;
13 correct?

14 A. My model assumes for measuring damages
15 that the athletes -- that there would have been a
16 certain amount of payment based on sort of full 85
17 rosters for football -- 85 athletes for football.
18 And those payments would be based on that. In order
19 to measure a payment for a particular athlete, it
20 assumes that that athlete would have wanted to
21 receive that payment and they would have opted in.

22 Q. Right. So you assumed that every -- let's
23 do these separately. We'll start. So, first, every
24 member -- every person who was on a men's football
25 or a men's basketball roster on a full scholarship

1 in 2016 to 2021, your model assumes they would have
2 opted in; correct?

3 MR. SIEGEL: Objection; misstates
4 testimony. Asked and answered.

5 THE WITNESS: So the dollar amount
6 doesn't -- doesn't assume that. So a particular
7 athlete who does opt in is not affected by whether
8 another athlete chooses to opt in or not; right?
9 But assigning a damage amount to each athlete is
10 assuming that -- that 85 athletes opt in for
11 football and, say, 13 for men's basketball.

12 BY MR. KILARU:

13 Q. I get that you calculate a per- -- I
14 understand you calculate a per- -- you agree with me
15 you calculation a per-student-athlete number;
16 correct?

17 A. Correct.

18 Q. And then you figure out how many people --
19 in calculating a total number of damages, you
20 multiply that by the number of scholarship players;
21 correct?

22 MR. SIEGEL: Objection; misstates
23 testimony. Misstates report. Asked and answered.

24 THE WITNESS: Yeah, I do a per-athlete
25 calculation.

1 BY MR. KILARU:

2 Q. Let's look at the chart in your report on
3 that. So can we go to page -- give me a minute.

4 Okay. So let's look at Exhibit 3 on page
5 72.

6 A. All right. Let me get to that.

7 Okay.

8 Q. Okay. So just walking through this. You
9 calculate a per-athlete royalty for all Division I
10 basketball athletes; correct? That's the third
11 column?

12 A. Yes.

13 Q. Okay. And then you figure out -- you have
14 here the number of Power Five basketball class
15 members; correct?

16 A. Yes.

17 Q. Okay. And then you have per-class-member
18 damages which are the same number as the royalty;
19 right?

20 A. Yes.

21 Q. Okay. And then the total class member
22 damages multiplies the per-class-member damages by
23 the number of Power Five basketball class members;
24 correct?

25 A. Yes.

1 Q. So your model includes every single member
2 of the Power Five basketball class opting in?

3 A. Yes. The total damages does. The
4 per-class-member damages doesn't -- doesn't require
5 that.

6 Q. Right. But the total number assumes
7 everyone opting in; correct?

8 A. Yes.

9 MR. SIEGEL: Objection; misstates -- that
10 misstates report --

11 Let me get my objection in.

12 Misstates report; misstates the testimony.

13 THE WITNESS: Yes, it multiplies the Power
14 Five basketball class members times the
15 per-class-member damages.

16 BY MR. KILARU:

17 Q. Okay. So just turning to the next page.
18 The football methodology is the same; correct?

19 A. Yes.

20 Q. So the calculation of the total class
21 member damages involves every member of the Power
22 Five football class opting into the video game?

23 MR. SIEGEL: Objection; misstates report.

24 THE WITNESS: I'm just looking. It's --
25 it's assuming 85 per team. So it's essentially

1 every Power Five full-scholarship athlete, yeah.

2 BY MR. KILARU:

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7 A. No, I don't. I mean, it's -- it's sort of
8 like what we see in other class actions where an
9 amount is determined -- we see in some other class
10 actions where an amount is determined for damages
11 and then people, like I mentioned before, opt in,
12 oh, here's my stock information for some securities,
13 you know, class action. And if somebody doesn't opt
14 in, then they don't get that amount.

15 So it doesn't -- it's sort of -- it
16 doesn't impact the sort of per-class-member damages.
17 It just impacts -- you know, it's just the total
18 number of -- of estimated damages on a class-wide
19 basis.

20 Q. All right. Okay.

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10 Q. Okay. You -- your model includes -- for
11 the football game for a minute -- every one of the
12 85 athletes on a roster -- every one of the 85
13 scholarship athletes on a roster; correct?

14 A. For football?

15 Q. Yes.

16 A. Correct, yes.

17 Q. Are you aware of whether -- so the NCAA
18 football game last existed in 2013. I'll represent
19 that to you. And are you aware of the roster size
20 of each team in that game?

21 A. I don't -- no, I don't recall as I sit
22 here.

23 Q. I'll represent to you that it had 68
24 players in the game per team instead of 85. Okay?
25 I'll just represent that to you.

1 A. Okay.

2 Q. Your knowledge -- to your knowledge that
3 would be -- 68 would be lower than the scholarship
4 number in 2013; right?

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20 Q. Right. I'm just asking you about the -- I
21 think the benchmark you used which is the last
22 football game. You'd agree that there were only 68
23 players on a roster then; right?

24 A. I jut -- as I said, I don't remember how
25 many were on the roster --

1 Q. Well, I'll tell you --

2 A. -- in 2013.

3 Q. Assuming it's 68. You don't know how they
4 decided which 68 to use; right?

5 A. In the past?

6 Q. Yes.

7 MR. SIEGEL: Objection; calls for
8 speculation. Assumes facts not in evidence.

9 THE WITNESS: I mean, I remember seeing
10 rosters with the names of, you know, actual
11 athletes. I'm trying to remember if there was -- I
12 just don't recall if they had a system for choosing
13 those 68. I just don't recall as I sit here. But I
14 do remember seeing the names of the athletes.

15 BY MR. KILARU:

16 Q. Your model also assumes that video game
17 companies would provide the royalty only to
18 scholarship athletes; correct?

19 A. That's how I've calculated it. Yes.

20 Q. Um --

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8 Q. Right. But I'm asking about your model,
9 which is the 85; right?

10 A. Right.

11 Q. So in your model there would be no royalty
12 allocated to a punter who is not on scholarship;
13 right?

14 A. No, not in the way I've done this
15 calculation for -- for class cert --

16 Q. Even though --

17 A. -- purposes.

18 Q. -- assuming the game play is similar to
19 how it was in the past, the punter would be someone
20 you would manipulate as part of the game and have
21 them punt to a corner of the field or what have you?

22 A. You're saying the punter doesn't have a
23 scholarship. But I'm assuming --

24 Q. In the hypothetical the punter doesn't
25 have a scholarship.

1 A. That's -- in your hypothetical, yeah.

2 Yeah, if they don't have a scholarship,
3 then I'm not calculating a damage for them. At the
4 same time, you know, it's certainly possible to do
5 that if for some reason EA decided to come out with
6 a game that had a hundred athletes, then it would be
7 possible to calculate damages, you know, for --
8 based on a hundred athletes.

9 Q. Okay. You're aware that today video games
10 often involve rosters that update live? So you can
11 get a new roster pushed to your console daily,
12 weekly, monthly?

13 A. I'm aware of that.

14 Q. Okay. Is it your opinion that in the
15 but-for world, video game companies would provide a
16 royalty to student athletes who are disqualified
17 from a team after the season starts?

18 A. So in my model -- again, looking in the
19 past -- I'm measuring a reasonable estimate of
20 damages for 85 scholarship athletes. If one of them
21 is ineligible for some reason after the season
22 starts -- I think that's how you characterize it --
23 I'm still measuring a damages calculation for them
24 in the past.

25 Q. The same would be true for a student

1 athlete who stopped playing a couple of games into
2 the season, just decided they didn't want to play
3 the sport anymore?

4 MR. SIEGEL: Objection; incomplete
5 hypothetical.

6 THE WITNESS: I mean, it sort of depends
7 when the game comes out and they're in the game;
8 like, their name, image, and likeness is being used
9 in the game. Whether or not they're still on the
10 team, their NIL is still being used in the game.
11 And so I -- I think it's perfectly reasonable to
12 calculate a -- a damages estimate for them. They're
13 still being used in the game. It's not like as if
14 the game pulls them out.

15 BY MR. KILARU:

16 Q. Could you turn to Appendix Exhibit C2 in
17 your report. It's at page 124.

18 A. Okay.

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[REDACTED]

8 BY MR. KILARU:

9 Q. In your model you use the same royalty
10 rate for the extra content in the full game; right?

11 A. Yes.

12 Q. And just turning to the next page -- I
13 don't want to ask all the same questions to belabor
14 the point -- the same points are true for the
15 football game; right?

16 A. Yes.

17 MR. KILARU: Okay. We should take a
18 break. I'm reasonably sure I'm done, but I just
19 want to take a couple of minutes to make sure.
20 Thanks.

21 THE VIDEOGRAPHER: We're going off the
22 record. The time is 5:07 p.m.

23 (Recess taken from 5:07 p.m. to 5:18 p.m.)

24 THE VIDEOGRAPHER: We're back on the
25 record. The time is 5:18 p.m.

1 MR. KILARU: We have no further questions
2 at this time. Thanks, Doctor.

3 THE WITNESS: Thank you.

4 THE VIDEOGRAPHER: This concludes today's
5 deposition of Dr. Daniel Rascher. Master media of
6 today's deposition will remain in the custody of
7 TSG. The time is 5:18 p.m. We are now off the
8 record.

9 (Proceedings adjourned at 5:18 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, HEIDI BELTON, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell
5 the truth, the whole truth, and nothing but the
6 truth in the within-entitled cause;

7 That said deposition was taken down in
8 shorthand by me, a disinterested person, at the time
9 and place therein stated, and that the testimony of
10 the said witness was thereafter reduced to
11 typewriting, by computer, under my direction and
12 supervision;

13 That before completion of the deposition
14 review of the transcript was not requested.

15 I further certify that I am not of counsel
16 or attorney for either or any of the parties to the
17 said deposition, nor in any way interested in the
18 event of this cause, and that I am not related to
19 any of the parties thereto.

20 DATED: January 11, 2023



21 _____
22 HEIDI BELTON, CSR, RMR, CRR, CCRR, CRC
23 CSR NO. 12885
24
25

ERRATA SHEET

Case Name: *In re College Athlete NIL Litigation*

Deposition Date: January 10, 2023

Deponent: Daniel Rascher

| Pg. | No. | Now Reads | Should Read | Reason |
|-----|-----|--|-----------------------------------|------------------------------------|
| 32 | 25 | "believe that's -- I have that in my -- in" | "believe I have that in" | Clarification |
| 33 | 6 | "a reasonable and reliable damage" | "reasonable and reliable damages" | Clarification |
| 36 | 1 | "and -- and the -- the use of those - of those NILs" | "and the use of those NILs" | Clarification |
| 39 | 25 | "hem" | "them" | Transcription Error |
| 50 | 12 | "those other -- those -- that other historical" | "those other historical" | Clarification |
| 52 | 7 | "578 or 567" | "5, 6, 7" | Transcription error; Clarification |
| 61 | 19 | "of -- of the - of the value - of the value of that - of that NIL" | "of the value of that NIL" | Clarification |
| 81 | 9 | "instead of the sort of" | "instead of the" | Clarification |
| 82 | 19 | "encounter" | "counter" | Transcription Error |
| 92 | 13 | "to a class-wide basis" | "on a class-wide basis" | Clarification |
| 93 | 3 | "notable" | "knowable" | Transcription error |
| 112 | 16 | "statements" | "payments" | Transcription error |
| 113 | 5 | "Schwartz" | "Schwarz" | Clarification |
| 116 | 18 | "offering" | "offered" | Clarification |
| 128 | 4 | "paid" | "pay" | Transcription error |
| 130 | 13 | "to make way" | "equally" | Transcription error |
| 158 | 9 | "think 450" | "Think 450" | Transcription error |
| 163 | 4 | "broadcaster" | "broadcast or" | Transcription error |

| | | | | |
|-----|----|-----------------|-------------------|---------------------|
| 177 | 6 | "encounter" | "counter" | Transcription error |
| 185 | 17 | "NCS" | "FCS" | Transcription error |
| 185 | 21 | "did" | "it" | Transcription error |
| 205 | 22 | "or" | "to" | Transcription error |
| 235 | 23 | "group of five" | "Group of Five" | Transcription error |
| 238 | 5 | "sort factors" | "sort of factors" | Transcription error |



Signature of Deponent, Daniel Rascher